

1 **CHAPTER 840. WIOA ELIGIBLE TRAINING PROVIDERS**

2
3 **PROPOSED RULES WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS**
4 **REGISTER. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT**
5 **IS SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE TEXAS**
6 **REGISTER.**

7
8 **ON SEPTEMBER 22, 2020, THE TEXAS WORKFORCE COMMISSION PROPOSED**
9 **THE RULES BELOW WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS**
10 **REGISTER.**

11
12 Estimated Publication Date of the Proposal in the *Texas Register*: **October 9, 2020**
13 Estimated End of Comment Period: **November 9, 2020**

14
15 The Texas Workforce Commission (TWC) proposes new Chapter 840, relating to
16 Workforce Innovation and Opportunity Act (WIOA) Eligible Training Providers,
17 comprising the following subchapters:

- 18 Subchapter A. General Provisions, §840.1 and §840.2
- 19 Subchapter B. Training Provider Eligibility, §840.10 and §840.11
- 20 Subchapter C. Training Program Eligibility, §§840.20 - 840.23
- 21 Subchapter D. Annual Reporting, §840.30 and §840.31
- 22 Subchapter E. Statewide Eligible Training Provider List, §§840.40 - 840.42
- 23 Subchapter F. Adverse Actions, §§840.50 - 840.55
- 24 Subchapter G. State and Local Flexibility, §§840.60 - 840.64

- 25
- 26
- 27 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**
- 28 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**
- 29 **PART III. IMPACT STATEMENTS**
- 30 **PART IV. COORDINATION ACTIVITIES**

31
32 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**
33 The purpose of the new Chapter 840 rules is to develop rules to establish the Eligible
34 Training Provider (ETP) system, statewide ETP List (ETPL), and WIOA training services
35 delivered by TWC and its 28 Local Workforce Development Board (Board) partners.
36 Current TWC rules in Chapter 841, Subchapter C, regarding Training Provider Certification,
37 support a previous training delivery model authorized by the Workforce Investment Act
38 (WIA), which was repealed by Congress with the passage of WIOA. Therefore, new Chapter
39 840 is proposed to reflect this updated service delivery model. New Chapter 840 will contain
40 all rules for the ETP system, authorized under WIOA. The rules in Chapter 841, Subchapter
41 C are concurrently proposed for repeal.

42
43 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

44
45 **SUBCHAPTER A. GENERAL PROVISIONS**

46 TWC proposes new Subchapter A, General Provisions, as follows:

1
2 **§840.1. Short Title and Purpose**

3 New §840.1 identifies statutes and regulations that determine the ETP system provisions.

4
5 **§840.2. Definitions**

6 New §840.2 relates to the definitions needed to make administration of the ETP system
7 consistent with federal regulations at 20 CFR Part 677, Subpart E and Part 680. The rule
8 also includes references to definitions in Texas Labor Code Chapter 301 and Texas
9 Government Code Chapter 2308.

10
11 **SUBCHAPTER B. TRAINING PROVIDER ELIGIBILITY**

12 TWC proposes new Subchapter B, Training Provider Eligibility, as follows:

13
14 **§840.10. Appropriate Licensure**

15 New §840.10 identifies general licensure requirements for eligible training providers in the
16 state. The section also references Texas Education Code Chapter 61, which governs higher
17 education institutions in Texas and Texas Education Code Chapter 132, which governs
18 proprietary schools. US Department of Labor (DOL)--approved Registered Apprenticeship
19 Programs (RAPs) are exempt from licensure under §840.10.

20
21 **§840.11. Eligibility of Training Providers**

22 New §840.11 identifies the requirement that training providers must provide training
23 services. Training services defined by Chapter 840 are consistent with the nonexhaustive list
24 provided in 20 CFR §680.200. The section also identifies that providers must submit
25 information required by TWC. The section identifies that such information shall be reviewed
26 by Boards and TWC to determine provider eligibility.

27
28 **SUBCHAPTER C. TRAINING PROGRAM ELIGIBILITY**

29 TWC proposes new Subchapter C, Training Program Eligibility, as follows:

30
31 **§840.20. Initial Eligibility Consideration**

32 New §840.20 relates to the process of eligibility for programs that have not previously been
33 included on the statewide ETPL. The section identifies the requirement to submit eligibility
34 criteria and performance information as determined by TWC. The section specifies that
35 initial eligibility criteria for programs include connections to statewide target occupations
36 and local business partnerships. The section reserves the right of TWC to develop additional
37 criteria for such determination. The section also identifies that TWC's three-member
38 Commission (Commission) may set minimum performance targets for programs related to
39 initial eligibility determination. The section specifies that initial eligibility shall last no
40 longer than 12 months and be followed by continued eligibility determination for programs.

41
42 **§840.21. Continued Eligibility Consideration**

43 New §840.21 relates to the process of eligibility determination for programs following the
44 period of initial eligibility. The section identifies that the continued eligibility determination
45 process follows initial eligibility and previous continued eligibility determinations. The
46 section specifies that continued eligibility criteria include those elements used for initial

1 eligibility and such additional criteria listed in 20 CFR §680.460. The section reserves the
2 right of TWC to develop additional criteria for such determination.

3
4 **§840.22. Registered Apprenticeship Programs**

5 New §840.22 specifies information that RAPs are required to provide in order to be included
6 on the statewide ETPL. The section identifies the exemption of RAPs from eligibility
7 determinations described by Chapter 840, Subchapter C.

8
9 **§840.23. Additional Eligibility Requirements**

10 New §840.23 identifies the right of TWC to develop additional requirements for inclusion
11 on the statewide ETPL. The section identifies that such additional requirements shall be
12 applied to programs during the eligibility determination following their development.

13
14 **SUBCHAPTER D. ANNUAL REPORTING**

15 TWC proposes new Subchapter D, Annual Reporting, as follows:

16
17 **§840.30. Annual Performance Reporting Requirement**

18 New §840.30 identifies the requirement of training programs to report performance
19 information to TWC annually. The section specifies student-level information required of
20 programs. The section also identifies how TWC will use such information to reduce the
21 reporting burden on programs by using existing connections between TWC systems to
22 calculate employment-related performance indicators required by WIOA §116(d)(4). The
23 section retains the right of TWC to develop additional requirements for annual reporting.

24
25 **§840.31. Notification of Annual Reporting Requirement**

26 New §840.31 identifies the responsibilities of TWC related to the methodology and timeline
27 of annual reporting for providers. The section describes provisions under which providers
28 may request an exemption from, or extension of, the annual reporting deadline from TWC.
29 The section includes information on the removal of programs for failure to meet annual
30 reporting timeline.

31
32 **SUBCHAPTER E. STATEWIDE ELIGIBLE TRAINING PROVIDER LIST**

33 TWC proposes new Subchapter E, Statewide Eligible Training Provider List, as follows:

34
35 **§840.40. Statewide ETPL**

36 New §840.40 clarifies which programs are included on the statewide ETPL. The section
37 relates to the inclusion of available general and performance information for programs on
38 the statewide ETPL. The section clarifies that information that may reveal personally
39 identifiable information (PII) for individual students shall not be included.

40
41 **§840.41. Distribution of the Statewide ETPL**

42 New §840.41 identifies TWC's responsibility to ensure that the public and workforce
43 partners have access to the statewide ETPL. The statewide ETPL will be maintained on
44 TWC's website and will be updated not less than monthly to ensure that recent information
45 is available to Texans.

1 **§840.42. Removal from the Statewide ETPL**

2 New §840.42 relates generally to voluntary and involuntary removal of programs from the
3 statewide ETPL. The section identifies that providers may at any time request that TWC
4 remove programs from the statewide ETPL. The section identifies that providers may at any
5 time request that TWC reintroduce such previously and voluntarily removed programs on
6 the statewide ETPL. Additionally, the section identifies that programs may be removed
7 involuntarily, or for cause, for reasons described in Chapter 840, Subchapter F. This section
8 identifies that previously removed programs must meet continued eligibility requirements in
9 order to be reintroduced on the statewide ETPL.

10
11 **SUBCHAPTER F. ADVERSE ACTIONS**

12 TWC proposes new Subchapter F, Adverse Actions, as follows:
13

14 **§840.50. Eligibility Actions**

15 New §840.50 identifies eligibility-related removal of programs from the statewide ETPL.
16 The section reserves the ability of TWC or Boards to consider new information provided
17 and accordingly alter eligibility determinations. The section also clarifies that RAPs may be
18 removed under §840.50 only when such programs are deregistered by DOL's apprenticeship
19 office.
20

21 **§840.51. Reporting Actions**

22 New §840.51 clarifies that programs that do not submit required annual performance reports
23 to TWC shall be removed from the statewide ETPL for not less than two years. The section
24 identifies that removal of programs for failure to report shall occur immediately following
25 the conclusion of the reporting period. The section does not apply to RAPs.
26

27 **§840.52. Performance Actions**

28 New §840.52 identifies the right of TWC to remove or place on a temporary performance
29 improvement plan (PIP) a program that fails to meet performance targets set by the
30 Commission. The section clarifies that program removal will immediately follow the
31 conclusion of the reporting period or unsuccessful completion of the PIP. The section does
32 not apply to RAPs.
33

34 **§840.53. WIOA Violations**

35 New §840.53 identifies the requirement that eligible training providers must comply with all
36 nondiscrimination requirements of WIOA §188. TWC shall require all providers to
37 acknowledge compliance with these nondiscrimination protections before approval of initial
38 eligibility and during annual reporting. Additionally, the section requires that providers must
39 comply with all requirements of Chapter 840. TWC or the Board may determine whether a
40 provider has violated provisions of WIOA or of Chapter 840. Such violation shall be
41 considered a substantial violation of the rules in Chapter 840. Removal under §840.53 shall
42 occur for not less than two years. TWC may require repayment of funds received by a
43 provider under Chapter 840 during such period of substantial violation.
44

45 **§840.54. Continuation of Students in Removed Programs**

1 New §840.54 identifies the allowance of Boards to continue students enrolled in programs
2 before removal from the statewide ETPL in cases not including WIOA violations.

3
4 **§840.55. Right of Appeal**

5 New §840.55 clarifies that ETPs have the right to appeal adverse actions, up to and
6 including removal from the statewide ETPL, in accordance with TWC's Chapter 823
7 Integrated Complaint, Hearings, and Appeals rules.

8
9 **SUBCHAPTER G. STATE AND LOCAL FLEXIBILITY**

10 TWC proposes new Subchapter G, State and Local Flexibility, as follows:

11
12 **§840.60. Determining Target Occupations**

13 New §840.60 identifies the process used by Boards to develop local target occupation lists.
14 Also known as Board target occupation lists, these lists must be developed with local labor
15 market information and may be informed by businesses and individuals in the Board's local
16 workforce development area (workforce area).

17
18 **§840.61. Individual Training Accounts**

19 New §840.61 identifies the process used by Boards to pay for training programs included on
20 the ETPL, or locally approved out-of-state programs through Individual Training Accounts
21 (ITAs). The section clarifies that ITA funds, which are defined by §840.2, are limited to
22 required training costs paid directly to the ETP. Boards may apply limitations to ITAs.

23
24 **§840.62. Training Contracts**

25 New §840.62 identifies training programs that may be funded for WIOA Adult and
26 Dislocated Worker Program participants through contracts rather than ITAs. WIA allowed
27 for a limited set of such exceptions to the ITA system for these participants, including on-
28 the-job training, customized training, insufficient number of providers, and program of
29 demonstrated effectiveness serving individuals with barriers. The section identifies the
30 additional ITA exceptions allowed under WIOA, including incumbent worker training,
31 cohort training, pay-for-performance contracts, and all exceptions allowed by WIA.

32
33 **§840.63. Local Training Program Information**

34 New §840.63 states that Boards may supplement information on the statewide ETPL for
35 local programs. The section clarifies that such additional information shall not supplant the
36 statewide ETPL for participants. Both this information and the statewide ETPL must be
37 provided to the public. The local information shall not limit consumer choice nor shall it
38 restrict participant access to RAPs.

39
40 **§840.64. Out-of-State Training Programs**

41 New §840.64 states that TWC will not include on the statewide ETPL any training program
42 for which the provider does not have a physical location in Texas. Additionally, the section
43 clarifies that Boards may develop local policies to allow ITA funding of such out-of-state
44 programs under limited circumstances. Limitations require that out-of-state programs align
45 with local Board target occupations, or those of another Texas location allowable by the
46 Board, and such programs must be included on another state's or US territory's ETPL at the

1 time of student enrollment and must be approved for ITA eligibility by the Agency's
2 executive director.

3
4 **PART III. IMPACT STATEMENTS**

5 Chris Nelson, Chief Financial Officer, has determined that for each year of the first five
6 years that the rules will be in effect, the following statements will apply:

7
8 There are no additional estimated costs to the state and to local governments expected as a
9 result of enforcing or administering the rules.

10
11 There are no estimated cost reductions to the state and to local governments as a result of
12 enforcing or administering the rules.

13
14 There are no estimated losses or increases in revenue to the state or to local governments as
15 a result of enforcing or administering the rules.

16
17 There are no foreseeable implications relating to costs or revenue of the state or local
18 governments as a result of enforcing or administering the rules.

19
20 There are no anticipated economic costs to individuals required to comply with the rules.

21
22 There is no anticipated adverse economic impact on small businesses, microbusinesses, or
23 rural communities as a result of enforcing or administering the rules.

24
25 Based on the analyses required by Texas Government Code, §2001.024, TWC has
26 determined that the requirement to repeal or amend a rule, as required by Texas Government
27 Code, §2001.0045, does not apply to this rulemaking.

28
29 Takings Impact Assessment

30 Under Texas Government Code, §2007.002(5), "taking" means a governmental action that
31 affects private real property, in whole or in part or temporarily or permanently, in a manner
32 that requires the governmental entity to compensate the private real property owner as
33 provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas
34 Constitution §17 or §19, Article I, or restricts or limits the owner's right to the property that
35 would otherwise exist in the absence of the governmental action, and is the producing cause
36 of a reduction of at least 25 percent in the market value of the affected private real property,
37 determined by comparing the market value of the property as if the governmental action is
38 not in effect to the market value of the property determined as if the governmental action is
39 in effect. The Commission completed a Takings Impact Analysis for the proposed
40 rulemaking action under Texas Government Code, §2007.043. The primary purpose of this
41 proposed rulemaking action, as discussed elsewhere in this preamble, is to develop rules
42 governing Texas' ETP system, including the statewide ETPL, in accordance with WIOA
43 requirements.

44
45 The proposed rulemaking action will not create an additional burden on private real
46 property. The proposed rulemaking action will not affect private real property in a manner

1 that would require compensation to private real property owners under the US Constitution
2 or the Texas Constitution. The proposal also will not affect private real property in a manner
3 that restricts or limits an owner's right to the property that would otherwise exist in the
4 absence of the governmental action. Therefore, the proposed rulemaking will not cause a
5 taking under Texas Government Code Chapter 2007.

6
7 Government Growth Impact Statement

8 TWC has determined that during the first five years in which the proposed new rules will be
9 in effect:

- 10 --the proposed new rules will not create or eliminate a government program;
- 11 --implementation of the proposed new rules will not require the creation or elimination of
- 12 employee positions;
- 13 --implementation of the proposed new rules will not require an increase or decrease in future
- 14 legislative appropriations to TWC;
- 15 --the proposed new rules will not require an increase or decrease in fees paid to TWC;
- 16 --the proposed new rules will not create a new regulation;
- 17 --the proposed new rules will not expand, limit, or eliminate an existing regulation;
- 18 --the proposed new rules will not change the number of individuals subject to the new rules;
- 19 and
- 20 --the proposed new rules will not positively or adversely affect the state's economy.

21
22 Economic Impact Statement and Regulatory Flexibility Analysis

23 TWC has determined that the proposed new rules will not have an adverse economic impact
24 on small businesses or rural communities, as these proposed rules place no requirements on
25 small businesses or rural communities.

26
27 Mariana Vega, Director of Labor Market and Career Information, has determined that there
28 is no significant negative impact upon employment conditions in the state as a result of the
29 rules.

30
31 Courtney Arbour, Director, Workforce Development Division, has determined that for each
32 year of the first five years in which the rules are in effect, the public benefit anticipated as a
33 result of enforcing the rules will be to ensure compliance with the federal WIOA as it
34 pertains to the state's ETP system, ETPL, and training services.

35
36 TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be
37 within TWC's legal authority to adopt.

38
39 **PART IV. COORDINATION ACTIVITIES**

40 While developing these rules for publication and public comment, TWC sought the
41 involvement of the 28 Boards. TWC provided the concept paper regarding these rule
42 amendments to the Boards for consideration and review on March 17, 2020. TWC also
43 conducted a conference call with Board executive directors and Board staff on March 27,
44 2020, to discuss the concept paper. During the rulemaking process, TWC considered all
45 information gathered in order to develop rules that provide clear and concise direction to all
46 parties involved.

1
2 Comments on the proposed rules may be submitted to
3 TWCPolicyComments@twc.state.tx.us. Comments must be received no later than 30 days
4 from the date that this proposal is published in the *Texas Register*.
5
6 The new rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which
7 provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary
8 for the effective administration of TWC services and activities.
9
10 The new rules implement the requirements set out in WIOA Sections 116, 122, and 134; 20
11 CFR Part 680, Subpart D; and 20 CFR 681.550.

1 **CHAPTER 840. WIOA ELIGIBLE TRAINING PROVIDERS**

2
3 **SUBCHAPTER A. GENERAL PROVISIONS**

4
5 **§840.1. Short Title and Purpose.**

6
7 (a) The rules contained in this chapter may be cited as the WIOA Eligible Training
8 Provider (ETP) Rules.

9
10 (b) The purpose of this chapter governing the provision of training services funded
11 through the Agency is to interpret and implement the requirements of federal
12 statutes and regulations to include:

13
14 (1) the following sections of the Workforce Innovation and Opportunity Act
15 (WIOA), PL 113-128:

16
17 (A) Eligible Training Providers as described in WIOA §122;

18
19 (B) contents of ETP performance reports as described in WIOA
20 §116(d)(4);

21
22 (C) data validation as described in WIOA §116(d)(5);

23
24 (D) publication of performance reports as described in WIOA
25 §116(d)(6)(B); and

26
27 (E) training services for adults and dislocated workers as described in
28 WIOA §134(c)(3);

29
30 (2) 20 CFR Part 680, Subparts B - D, which describe training services,
31 training providers, and individual training accounts;

32
33 (3) 20 CFR §681.550, which allows the provision of training services to out-
34 of-school youth, ages 16 to 24, through Individual Training Accounts
35 (ITA);

36
37 (4) the Family Educational Rights and Privacy Act (described in 20 CFR 99)
38 audit or evaluation exception to disclose Personally Identifiable
39 Information (PII) from education records for WIOA performance
40 accountability purposes. This authority is further clarified in joint
41 guidance released by the US Department of Labor (DOL) and the US
42 Department of Education (ED).

43
44 (c) The rules contained in this chapter shall apply to the Agency, Local Workforce
45 Development Boards (Boards), and providers of training services for WIOA
46 Adults and Dislocated Workers. At the discretion of the Board, the Eligible

1 Training Provider System (ETPS) may be applied to the delivery of training
2 services funded through the Commission, including WIOA Youth Program out-
3 of-school youth and in-school youth, Choices, Supplemental Nutrition
4 Assistance Program - Employment and Training (SNAP E&T), and Trade
5 Adjustment Assistance (TAA).

6
7 **§840.2. Definitions.**

8
9 The following words and terms, when used in this chapter, shall have the following
10 meanings, unless the context clearly indicates otherwise.

11
12 (1) Address of record--In addition to the mailing address contained in the
13 application for approval, each provider shall establish an email address of
14 record, with the format of the address to be
15 "ProviderName.Director@xdomain." This email address of record must
16 consistently include a minimum of two current recipients. Providers
17 currently licensed with TWC's Career Schools and Colleges (CSC)
18 program must use their CSC-approved email of record.

19
20 (2) Agency--The unit of state government established under Texas Labor
21 Code, Chapter 301, that is presided over by the Commission and
22 administered by the executive director to operate the integrated workforce
23 development system and administer the unemployment compensation
24 insurance program in this state as established under the Texas
25 Unemployment Compensation Act, Texas Labor Code Annotated, Title 4,
26 Subtitle A, as amended. The definition of Agency shall apply to all uses of
27 the term in rules contained in this chapter.

28
29 (3) Community--Based Organization--As defined in WIOA §3(10), a private
30 nonprofit organization (which may include a faith-based organization),
31 that is representative of a community or a significant segment of a
32 community and that has demonstrated expertise and effectiveness in the
33 field of workforce development.

34
35 (4) Customized Training--As defined in WIOA §3(14), means training:

36 (A) that is designed to meet the specific requirements of an employer
37 (including a group of employers);

38 (B) that is conducted with a commitment by the employer to employ an
39 individual upon successful completion of the training; and

40 (C) for which the employer pays:

41 (i) a significant portion of the cost of training, as determined by
42 the local Board, taking into account the size of the employer
43
44
45
46

1 and such other factors that the local Board determines to be
2 appropriate, which may include the number of employees
3 participating in training, wage, and benefit levels of those
4 employees (at present and anticipated upon completion of the
5 training), relation of the training to the competitiveness of a
6 participant, and other employer-provided training and
7 advancement opportunities; and

8
9 (ii) in the case of customized training (as defined in
10 subparagraphs (A) and (B) of this paragraph) involving an
11 employer located in multiple local areas in the state, a
12 significant portion of the cost of the training, as determined by
13 the Commission, taking into account the size of the employer
14 and such other factors that the Commission determines to be
15 appropriate.

16
17 (5) Eligible Training Provider (ETP)--A training provider as defined by this
18 chapter with one or more programs included on the statewide ETPL.

19
20 (6) Individual Training Account (ITA)--Payment agreement established by a
21 local Board on behalf of a participant with a training provider. ITAs may
22 be used only to pay for a training program included on the statewide
23 ETPL, except where an out-of-state program is approved by the Board in
24 accordance with §840.53 of this chapter (relating to WIOA Violations).

25
26 (7) LWDA--Local Workforce Development Area (workforce area) designated
27 by the governor as provided in Texas Government Code, §2308.252.

28
29 (8) LWDB--Local Workforce Development Board (Board) created pursuant to
30 Texas Government Code, §2308.253, and certified by the governor
31 pursuant to Texas Government Code, §2308.261.

32
33 (9) On-the-Job Training (OJT)--As defined by WIOA §3(44), a training by an
34 employer that is provided to a paid participant while engaged in
35 productive work in a job that:

36
37 (A) provides knowledge or skills essential to the full and adequate
38 performance of the job;

39
40 (B) is made available through a program that provides the employer with
41 partial reimbursement of the wage rate of the participant for the
42 extraordinary costs of providing the training and additional
43 supervision related to the training; and

44
45 (C) is limited in duration as appropriate to the occupation for which the
46 participant is being trained, taking into account the content of the

1 training, the prior work experience of the participant, and the service
2 strategy of the participant, as appropriate.

3
4 (10) Target Occupations--As determined by LWDA, include:

5
6 (A) occupations that:

7
8 (i) are in-demand, as defined by WIOA §3(23);

9
10 (ii) have a dedicated training component; and

11
12 (iii) provide wages that meet self-sufficiency requirements in the
13 LWDA; or

14
15 (B) occupations that are included in career pathway leading to an
16 occupation described in subparagraph (A) of this paragraph.

17
18 (11) Training Provider--As set out in WIOA §122(a)(2), provides a program
19 containing one or more training services, as defined by this chapter, and
20 must be one of the following entities:

21
22 (A) an institution of higher education that provides a program that leads
23 to a recognized postsecondary credential;

24
25 (B) an entity that carries out programs registered under the Act of
26 August 16, 1937 (commonly known as the "National Apprenticeship
27 Act"; 50 Stat. 664, chapter 663; 29 USC 50 et seq.); or

28
29 (C) another public or private provider of a program of training services,
30 which may include:

31
32 (i) community-based organizations;

33
34 (ii) joint labor-management organizations; and

35
36 (iii) eligible providers of adult education and literacy activities
37 under WIOA Title II, if such activities are provided in
38 combination with occupational skills training.

39
40 (12) Training Services--As provided in WIOA §134(c)(3)(D), may include:

41
42 (A) occupational skills training, including training for nontraditional
43 employment;

44
45 (B) OJT;
46

- 1 (C) incumbent worker training;
2
3 (D) programs that combine workplace training with related instruction,
4 which may include cooperative education programs;
5
6 (E) training programs operated by the private sector;
7
8 (F) skill upgrading and retraining;
9
10 (G) entrepreneurial training;
11
12 (H) transitional jobs;
13
14 (I) job readiness training provided in combination with any services
15 described in subparagraphs (A) - (H) of this paragraph;
16
17 (J) adult education and literacy activities, including activities of English
18 language acquisition and integrated education and training
19 programs, provided concurrently or in combination with any
20 services described in subparagraphs (A) - (H) of this paragraph;
21
22 (K) customized training conducted with a commitment by an employer
23 or group of employers to employ an individual upon successful
24 completion of the training.
25
26 (13) WIOA--Workforce Innovation and Opportunity Act, PL 113 - 128, 29
27 USCA §3101, et seq., enacted July 22, 2014.
28

29 **SUBCHAPTER B. TRAINING PROVIDER ELIGIBILITY**

30
31 **§840.10. Appropriate Licensure.**

- 32
33 (a) Training providers, as defined by this chapter, shall provide evidence of
34 appropriate licensure or exemption from licensure or regulation in a manner
35 determined by the Commission.
36
37 (b) Institutions and agencies included in Texas Education Code, §61.003 shall be
38 considered appropriately licensed for the purposes of this section.
39
40 (c) Proprietary Schools in compliance with the requirements of Texas Education
41 Code Chapter 132 shall be considered appropriately licensed for the purposes of
42 this section.
43
44 (d) Registered Apprenticeship Programs (RAPs) approved by the DOL are exempt
45 from all requirements of this section. Industry Recognized Apprenticeship
46 Programs (IRAPs) must comply with licensure and eligibility requirements
47 described in this section.

1
2 **§840.11. Eligibility of Training Providers.**
3

4 (a) Training providers shall provide one or more training services, as defined in this
5 chapter, to be considered eligible for the statewide ETPL.
6

7 (b) Training providers shall submit information required by the Agency for
8 determination of eligibility. This information shall be submitted in a manner
9 determined by the Agency.
10

11 (c) Boards and the Agency shall review information submitted by training providers
12 in order to determine eligibility.
13

14 **SUBCHAPTER C. TRAINING PROGRAM ELIGIBILITY**
15

16 **§840.20. Initial Eligibility Consideration.**
17

18 (a) All training programs that have not previously been determined eligible for the
19 statewide ETPL shall submit such eligibility criteria and performance
20 information required by the Agency. This information shall be submitted in a
21 manner determined by the Agency.
22

23 (b) Eligibility criteria shall include:
24

25 (1) a connection to statewide targeted occupations;
26

27 (2) a partnership with businesses in the workforce area, in accordance with
28 Agency guidance; and
29

30 (3) other criteria required by the Commission.
31

32 (c) Performance information shall include such requirements as determined
33 necessary by the Agency.
34

35 (d) The Agency may exempt a program from the performance information
36 requirement for initial eligibility determination. Such exemption may be applied
37 when a program has not been connected to any students or when such
38 connection is of insufficient duration to calculate performance.
39

40 (e) The Commission may determine minimum performance targets for initial
41 eligibility for the statewide ETPL.
42

43 (f) Boards and the Agency shall review program eligibility criteria and aggregated
44 performance information submitted by training programs in order to determine
45 eligibility.
46

1 (g) Training programs determined eligible under this subchapter shall be approved
2 for inclusion on the statewide ETPL for up to 12 months following approval by
3 the Agency.

4
5 (h) Following the initial eligibility period, training programs shall be subject to
6 continued eligibility determination.

7
8 **§840.21. Continued Eligibility Consideration.**

9
10 (a) Training programs shall be subject to continued eligibility determination within
11 12 to 24 months following previous eligibility determination, as determined by
12 the Agency.

13
14 (b) The Agency shall use such information provided during the most recent annual
15 performance reporting period, including provider and program eligibility and
16 student performance outcomes, for continued eligibility consideration.

17
18 (c) Eligibility criteria shall include:

19
20 (1) such information required for Initial Eligibility determination;

21
22 (2) such additional criteria included in 20 CFR §680.460; and

23
24 (3) other criteria required by the Agency deemed necessary to determine a
25 provider's eligibility.

26
27 (d) Training programs shall submit, through annual reporting, required performance
28 information, which shall include, but may not be limited to, the following:

29
30 (1) Information on recognized postsecondary credentials received by
31 participants; and

32
33 (2) Such information required by and developed from annual reporting.

34
35 (e) The Commission shall determine minimum performance targets for continued
36 eligibility for the statewide ETPL. The Commission may review and adjust
37 established minimum performance targets as determined necessary for the
38 efficient operation of the program.

39
40 (f) Boards and the Agency shall review aggregated performance information
41 submitted by training programs to determine whether the information meets or
42 exceeds the program eligibility criteria and shall notify providers of any adverse
43 determination in accordance with Subchapter F of this chapter (relating to
44 Adverse Actions).

1 (g) Training programs determined eligible under this subchapter shall be approved
2 for inclusion on the statewide ETPL for up to 24 months following approval by
3 the Agency.

4
5 **§840.22. Registered Apprenticeship Programs.**

6
7 (a) DOL-approved RAPs shall submit the following information to the Agency for
8 program inclusion on the statewide ETPL:

9
10 (1) Name and address of the RAP sponsor;

11
12 (2) Name and address of related technical instruction provider, if different
13 from sponsor;

14
15 (3) Cost of instruction, where instruction is not provided directly by sponsor;

16
17 (4) Related occupations;

18
19 (5) Method and length of instruction;

20
21 (6) Number of active apprentices; and

22
23 (7) Other information required by the Agency not expressly prohibited by
24 DOL.

25
26 (b) RAPs are exempt from all other requirements of this subchapter.

27
28 (c) RAPs may voluntarily provide performance and other information to the
29 Agency. Such information will be included on the statewide ETPL as
30 appropriate.

31
32 **§840.23. Additional Eligibility Requirements.**

33
34 (a) The Commission may apply additional requirements to training programs for
35 inclusion on the statewide ETPL.

36
37 (b) Additional requirements developed under this subsection shall be applied to
38 ETP programs during Initial or Continued Eligibility determinations.

39
40 **SUBCHAPTER D. ANNUAL REPORTING**

41
42 **§840.30. Annual Performance Reporting Requirement.**

43
44 (a) Each year, all training providers and programs included on the statewide ETPL
45 shall submit all information determined necessary by the Agency. Such
46 information shall include, at a minimum, student-level data for each program.

1
2 (b) Required student-level data may include the following:

3
4 (1) First name of student;

5
6 (2) Last name of student;

7
8 (3) Student's Social Security number (SSN), except where unavailable;

9
10 (4) Student's first date of attendance;

11
12 (5) Student's last date of attendance, when applicable;

13
14 (6) Type of recognized credential earned and the date on which it was
15 received, when applicable; and

16
17 (7) Other information as determined by the Agency.

18
19 (c) The Agency shall use student-level data submitted by providers to determine
20 performance outcomes for provider programs. The student SSN shall be used to
21 verify employment-related outcomes. Such performance outcomes shall include
22 for WIOA participants and students in general:

23
24 (1) Program completion rate;

25
26 (2) Percentage in unsubsidized employment during the second quarter after
27 exit from the program;

28
29 (3) Percentage in unsubsidized employment during the fourth quarter after
30 exit from the program;

31
32 (4) Median earnings of those in unsubsidized employment during the second
33 quarter after exit from the program;

34
35 (5) Percentage obtaining a recognized postsecondary credential or high school
36 equivalency during participation in or within one year after exit from the
37 program; and

38
39 (6) Other performance outcomes required by the Agency.

40
41 **§840.31. Notification of Annual Reporting Requirement.**

42
43 (a) The Agency shall determine the date and method of reporting.

44
45 (b) Boards and training providers shall be notified of the annual reporting
46 requirements not less than 30 days prior to the deadline set by the Agency.

- 1
2 (c) The Agency shall determine the method of notification, which may include
3 public release, formal guidance, address of record email notification, or other
4 methods.
5
6 (d) Providers are responsible for maintaining accurate contact information for
7 locations and programs in order that the Agency may provide such notifications.
8 This includes, but may not be limited to, email address of record.
9
10 (e) Providers of training programs unable to report prior to the annual reporting
11 deadline set by the Agency may request an extension or exemption from
12 reporting caused by circumstances beyond the provider's control, which may
13 include:
14
15 (1) natural disaster or other state emergency;
16
17 (2) unexpected personnel transitions;
18
19 (3) unexpected technology-related issues; or
20
21 (4) other circumstances determined acceptable by the Agency.
22
23 (f) Providers shall request an extension for, or exemption from, annual performance
24 reporting within 30 days of the occurrence reason--but no later than the required
25 reporting date--for consideration by the Agency.
26
27 (g) Failure to submit required information in accordance within Agency-determined
28 time lines shall result in removal of affected training programs from the
29 statewide ETPL for not less than two years (24 months).
30

31 **SUBCHAPTER E. STATEWIDE ELIGIBLE TRAINING PROVIDER LIST**

32 **§840.40. Statewide ETPL.**

- 33
34
35 (a) The statewide ETPL shall contain all eligible programs submitted by training
36 providers, once approved, to provide services through ITAs to WIOA
37 participants.
38
39 (b) In order to provide usable information for WIOA participants, and students in
40 general, the statewide ETPL shall contain such program information required by
41 the Agency.
42
43 (c) Performance information provided to the Agency on an eligible provider's
44 programs shall be included with the statewide ETPL provided that such
45 information does not reveal personally identifiable information of students.
46

1 (d) The statewide ETPL shall include such RAPs approved by the Agency in
2 accordance with this chapter.

3
4 **§840.41. Distribution of the Statewide ETPL.**

5
6 (a) The Agency shall make the statewide ETPL available to the public, secondary,
7 and postsecondary educational systems and its other partners through the
8 Agency's website.

9
10 (b) Updates to the statewide ETPL will be published at a frequency determined by
11 the Agency, but not less than monthly.

12
13 (c) The Agency shall provide the statewide ETPL in a format accessible to
14 individuals with disabilities.

15
16 (d) Boards shall ensure that the statewide ETPL is locally available in a current and
17 accessible format.

18
19 (e) Boards shall make the statewide ETPL available to the following:

20
21 (1) Local Workforce Solutions Offices and staff;

22
23 (2) Local partners, including those providing training or related services;

24
25 (3) Program participants; and

26
27 (4) The public.

28
29 (f) Boards shall ensure that the statewide ETPL is made available to WIOA
30 program participants eligible for training even when local information is
31 developed, in accordance with §840.61 of this chapter (relating to Individual
32 Training Accounts).

33
34 **§840.42. Removal from the Statewide ETPL.**

35
36 (a) Voluntary Removal. Providers may request that a program be removed from the
37 statewide ETPL. Such requests shall:

38
39 (1) be submitted by a provider in a manner determined by the Agency; and

40
41 (2) be processed in a manner determined by the Agency.

42
43 (b) Programs voluntarily removed from the statewide ETPL may be redetermined
44 for inclusion following such request from an eligible provider.

1 (c) Removal for Cause. Providers and programs may be removed from the
2 statewide ETPL in accordance with Subchapter F of this chapter (relating to
3 Adverse Actions).

4
5 (d) Programs involuntarily removed from the statewide ETPL may be redetermined
6 for inclusion following the removal period included in Subchapter F of this
7 chapter. At such time, programs shall submit such information required by the
8 Commission to determine current eligibility for reentry on the statewide ETPL.

9
10 (e) Removed programs that are provided reentry to the statewide ETPL will need to
11 meet the continued eligibility requirements for purposes of eligibility
12 determination and performance reporting.

13
14 **SUBCHAPTER F. ADVERSE ACTIONS**

15
16 **§840.50. Eligibility Actions.**

17
18 (a) Removal of a program for failure to meet eligibility criteria shall occur
19 following the end of the initial or continued eligibility period for such program,
20 except where otherwise described in this subchapter.

21
22 (b) The Board or Agency may review or reverse previous decisions if the provider
23 submits new information that may affect the eligibility of such programs.

24
25 (c) RAPs shall be removed under this section only if such programs become
26 deregistered under the National Apprenticeship Act.

27
28 **§840.51. Reporting Actions.**

29
30 (a) Failure to submit required annual reporting information, including performance
31 outcomes, in accordance within Agency-determined time lines shall result in
32 removal of affected programs from the statewide ETPL for not less than two
33 years.

34
35 (b) Failure to submit information for any individual program shall result in the
36 removal of such program.

37
38 (d) Removal shall occur following the end of the reporting period, as determined by
39 the Agency.

40
41 (e) RAPs shall be exempt from actions taken under this section.

42
43 **§840.52. Performance Actions.**

44
45 (a) Failure to meet or exceed any performance requirements set by the Commission
46 may result in:

1
2 (1) removal of a program from the statewide ETPL, for a period of time
3 determined by the Agency; or

4
5 (2) placement in a temporary performance improvement plan at the Agency's
6 discretion.

7
8 (b) Removal shall occur following the end of the reporting period or performance
9 improvement plan, as determined by the Agency.

10
11 (c) RAPs, including those voluntarily providing performance information to the
12 Commission, shall be exempt from actions taken under this section.

13
14 **§840.53. WIOA Violations.**

15
16 (a) Training providers shall comply with all nondiscrimination protections included
17 in WIOA §188.

18
19 (b) The Agency shall require providers to submit an acknowledgment of
20 compliance requirements, addressed in subsection (a) of this section, at initial
21 eligibility determination in electronic format, or by such other means determined
22 by the Agency.

23
24 (c) The Agency shall require providers to submit an acknowledgment of
25 compliance requirements, addressed in subsection (a) of this section, during
26 annual report submission in electronic format or by such other means
27 determined by the Agency.

28
29 (d) A local Board or the Agency may determine if a provider has violated any
30 protection provided by WIOA. If such determination is made, the provider will
31 be considered to have substantially violated the rules of this chapter.

32
33 (e) Providers determined to have substantially violated the rules of this chapter shall
34 have their programs removed from the statewide ETPL immediately. Removal
35 for such violation shall be for not less than two years.

36
37 (f) The Agency may require providers that have been determined to have violated
38 the rules of this chapter repay any funds provided under this chapter during the
39 period of such violation.

40
41 **§840.54. Continuation of Students in Removed Programs.**

42
43 (a) Students enrolled in a program removed under this subchapter, except §840.53
44 of this subchapter (relating to WIOA Violations), shall be allowed to continue in
45 training when the ITA was encumbered before such removal.

46

1 (b) For programs removed under §840.53 of this subchapter, the Agency may
2 require that students be discontinued following removal. Boards may place a
3 student affected by program removal into a similar program, in accordance with
4 local policies, when available.

5
6 **§840.55. Right of Appeal.**

7
8 (a) Providers or programs, as defined by this chapter, shall have the right to appeal
9 adverse actions included in this subchapter, in accordance with Chapter 823 of
10 this title (relating to Integrated Complaints, Hearing, and Appeals).

11
12 (b) Providers subject to removal as a result of any adverse action described in this
13 chapter shall receive notice by the Agency of pending action and their rights to
14 appeal such decision.

15
16 **SUBCHAPTER G. STATE AND LOCAL FLEXIBILITY**

17
18 **§840.60. Determining Target Occupations.**

19
20 (a) Annually, each Board shall adopt a list of target occupations in the LWDA.

21
22 (b) In adopting the list of target occupations, the Board:

23
24 (1) shall consider labor market information provided by the Agency; and

25
26 (2) may consider additional local information which may include, but is not
27 limited to:

28
29 (A) information provided by businesses and business organizations;

30
31 (B) information provided by workers and worker organizations; or

32
33 (C) information provided by economic development or occupational
34 organization partners.

35
36 (c) The Agency shall maintain the target occupation lists for each LWDA, including
37 any updates provided by Boards. The target occupation list from each Board
38 shall be compiled into a single statewide target occupation list.

39
40 **§840.61. Individual Training Accounts.**

41
42 (a) A participant determined eligible for training may use an ITA to pay for the cost
43 of training programs that are:

44
45 (1) included on the statewide ETPL; or
46

1 (2) locally approved out-of-state programs.

2
3 (b) ITAs shall include only those costs required for successful completion of
4 training programs, which are paid directly to providers of programs on the
5 statewide ETPL or locally approved out-of-state programs.

6
7 (c) Boards shall ensure that ITA allowance does not exceed training costs listed for
8 programs at the time of student enrollment.

9
10 (d) Additional costs related to training programs may be paid using support services
11 funds, in accordance with existing guidance.

12
13 (e) Boards may apply additional criteria to training programs beyond those included
14 in this chapter. Such additional criteria may include limitations on the:

15
16 (1) cost of training programs; and

17
18 (2) length of training programs.

19
20 **§840.62. Training Contracts.**

21
22 (a) Training contracts may be used to fund training programs, listed in this section,
23 for participants instead of ITAs.

24
25 (b) Boards shall provide participants with access to the statewide ETPL and training
26 contracts as applicable to ensure consumer choice.

27
28 (c) When the Local Plan describes the process to be used in selecting providers
29 under such contract, a Board may contract with training programs under the
30 following circumstances:

31
32 (1) The training program is an OJT, customized training, incumbent worker
33 training, or transitional jobs training; or

34
35 (2) The Board determines that:

36 (A) there is an insufficient number of ETPs in the workforce area to
37 accomplish the purposes of a system of ITAs;

38 (B) there is a training program with demonstrated effectiveness offered
39 in Board area by a community-based organization or other private
40 organization to serve individuals with barriers to employment;

41 (C) it would be most appropriate to award a contract to an institution of
42 higher education or other provider of training services to facilitate
43
44
45

1 the training of multiple individuals in one or more in-demand
2 industry sectors or occupations; or

3
4 (D) the Board enters into a pay-for-performance contract for training
5 services.

6
7 (3) When funded through contracts, training programs listed in subsection (b)
8 of this section shall be considered exempt from the information and
9 performance requirements required by this chapter.

10
11 (4) Training programs listed in this subchapter that request access to the
12 statewide ETPL must comply with licensure and eligibility requirements
13 described in this chapter for such inclusion.

14
15 **§840.63. Local Training Program Information.**

16
17 (a) Boards may develop and maintain supplementary information for local
18 programs eligible for Board ITA funds.

19
20 (b) The following programs may be included:

21
22 (1) Any programs included on the statewide ETPL; and

23
24 (2) Out-of-state programs, in accordance with §840.64 of this subchapter
25 (relating to Out-of-State Training Programs).

26
27 (c) Such local information shall:

28
29 (1) not limit consumer choice;

30
31 (2) not restrict participant access to RAPs included on the statewide ETPL;
32 and

33
34 (3) be provided to participants and the public in addition to the statewide
35 ETPL, in accordance with §840.41 of this chapter (relating to Distribution
36 of the Statewide ETPL).

37
38 **§840.64. Out-of-State Training Programs.**

39
40 (a) The Agency shall not include out-of-state providers without any physical
41 training locations in Texas on the statewide ETPL.

42
43 (b) The Agency may allow Boards to fund out-of-state programs through ITAs
44 when the following conditions are met:

1
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- (1) The training program is included on an ETPL in another state or US territory at the time of student enrollment;
- (2) The training program is aligned with a local target occupation, or target occupation in an area to which the participant is willing to commute or relocate, provided that such location is in Texas;
- (3) The Board has submitted such required information for the out-of-state program in such manner determined by the Agency;
- (4) The Agency executive director has reviewed and approved the out-of-state program for ITA eligibility;
- (5) The out-of-state provider and related programs meet ETP eligibility requirements in accordance with Subchapters B and C of this chapter (relating to Training Provider Eligibility and Training Program Eligibility);
- (6) Other conditions as required by the Agency; and
- (7) Board policy exists that sufficiently addresses such requirements described in this section.

(c) A Board may fund out-of-state training programs through training contracts in accordance with §840.61 of this subchapter (relating to Individual Training Accounts).