

Sections 841.2 Definitions, Workforce Investment Act

The following rule amendments will be effective October 27, 1999

The Texas Workforce Commission (Commission) adopts amendments to §841.2, relating to the definitions applicable to implementation of the Workforce Investment Act (WIA) with changes as proposed in the July 23, 1999, issue of the Texas Register (24TexReg5691).

The purposes of the amendments are to provide clarity regarding the rules for early implementation of WIA and to establish uniform understanding and interpretation of the following terms: "certificate," "certified provider," "completion" and "performance standards."

The definition of "certificate" is added to clarify that the certificate pertains to proof of successful completion of a course, sequence of courses or programs which is a minimum of 144 non-credit clock/contact hours or 9 credit hours in length for the purpose of establishing initial eligibility under §841.38. The Commission selected the minimum number of hours based on recent feedback from the public, particularly from community colleges, requesting clarification on the definition of "certificate" to allow for consideration of shorter duration courses or programs of training services that are non-credit, credit or continuing education offerings. After consultation with the training provider community, the Commission has proposed that a certificate program of training include a minimum of 9 credit hours, which is the equivalent of 144 clock/contact hours. This criterion is proposed in order to establish an appropriate amount of time to allow for a substantial body of knowledge to be conveyed. Within WIA, the term certificate is used in association with a program of training services. The Commission determined that a program of training services should constitute more than incidental or short-term training. Since the term is used in conjunction with post-secondary institutions, providing criterion that relates to credit or the equivalent clock/contact hours is appropriate.

The purpose of adding the terms "certified provider," "completion," and "performance standards" is to provide consistency.

Comments were received from the Dallas County Community College District, Office of Resource Development; the Continuing Education and Workforce Development Department, Tarrant County College, Community Campus; and the president of the Texas Administrators of Continuing Education. Some commenters approved of the rule, and others did not state whether they approved or disapproved of the rule but did suggest changes.

Comment: One commenter requested clarification of the definition of certificate to distinguish between programs measured in clock/contact hours and those measured in credit hours.

Response: The Commission agrees and will amend §841.2 (2) to read: "Certificate - For the purpose of establishing initial eligibility under §841.38, a document or other proof provided by an educational institution or other training provider awarded after successful completion of a course, sequence of courses, or program that is a minimum of 144 non-credit clock/contact hours or 9 credit hours in length."

Comment: One commenter recommended that non-credit certificate programs be at least 20 contact hours and that shorter courses be provided with the approval of the Local Workforce Development Board. Another commenter suggested that courses of less than 20 contact hours should be included.

Response: The Commission does not agree with the recommended change because the Commission selected a minimum number of hours based on feedback from community colleges requesting consideration of shorter duration courses that are non-credit, credit or continuing education offerings. Twenty contact hours would constitute incidental or short-term training. After consultation with the training provider community, the Commission proposed a minimum number of credit or clock/contact hours to establish an appropriate amount of time to allow for a substantial body of knowledge to be conveyed. The Commission determined that a program of training services should constitute more than incidental or short-term training. Further, training programs of shorter duration may still be considered for WIA certification as a non-exempt program application.

Comment: One commenter suggested that the maximum TWC-approved contact hours for non-credit courses be extended to 359. The commenter suggested this will accommodate the hours approved through the Guidelines for Instructional Programs in Workforce Education.

Response: The Commission sees no reason to set a limit of the maximum number of hours because the Commission wants to allow for programs which are over 360 hours as an option for participants.

Comment: One commenter proposed statewide certification of all credit and non-credit vocational courses listed in the Workforce Education Course Manual that is compiled by the Texas Higher Education Coordinating Board. The commenter suggested that this method of certifying courses would eliminate the need to handle "hundreds or thousands" of forms submitted by colleges.

Response: The Commission does not believe that the comment applies to the proposed amendment to §841.2, which only added definitions for four terms related to the Training Provider Certification process: certificate, certified provider, completion, and performance standards. The Commission recognizes the need to streamline the process and will take this recommendation under consideration.

Comment: One commenter suggested that there is confusion about the tracking of WIA students following training and job placement, and recommended that only WIA students be tracked due to the cost and personnel requirements of such an effort. The commenter suggested this recommendation only if the tracking must be provided by Boards.

Response: The WIA requires tracking of information on WIA funded and non-WIA funded students as referenced in WIA §122 at (d)(1), (b)(2)(D)(ii), and (c)(5). The Commission does not have the discretion to change a statutory requirement. For this reason, no changes to the rule will be made at this time.

Background Regarding Early Implementation. The 74th Texas Legislature and the Governor enacted Texas' landmark legislation, House Bill 1863 (H.B. 1863), in 1995. This state law reformed both the welfare and workforce systems and made Texas the nation's leader among reform-minded states. H.B. 1863 provided local elected officials the opportunity to form local workforce development boards (LWDBs) that enjoy the flexibility and authority to design and oversee the delivery of workforce development services that meet the needs of local employers and workers.

The federal Workforce Investment Act of 1998 recognizes the strides made in the development of Texas' workforce investment system and specifically provides for the state to maintain many features of H.B. 1863. Without these provisions, early implementation of WIA in Texas would be substantially more complicated. Key features of the system that Texas is preserving include the following.

The State Human Resource Investment Council, called the Texas Council on Workforce and Economic Competitiveness (TCWEC) and constituted under prior consistent state law, will function as the State Board.

The twenty-eight existing local workforce development areas (LWDAs), established under prior consistent state law, will function as the local workforce investment areas for purposes of WIA.

The State will continue to use the Allocation Rule established under prior consistent state law for the disbursement of WIA funds.

LWDBs established in conformity with prior consistent state law will function as the local workforce investment boards, including those functions required of a Youth Council.

In lieu of designating or certifying one-stop partners and operators as described in WIA, Texas requires LWDBs to partner with those entities outlined under prior consistent state law, and to competitively procure the Center Operator(s).

The LWDBs will also continue to make arrangements for financial services by selecting fiscal agents in accordance with the process established in prior consistent state law set out in the Texas Government Code.

Texas bases its strategies for implementing WIA requirements for the Texas workforce development system on four key principles determined by the Governor: (1) limited and efficient state government, (2) local control, (3) personal responsibility, and (4) support for strong families. The training provider certification system is guided by these four key principles which serve as a framework to guide the development of this system in order to allow maximum flexibility, emphasize customer choice, and demand strict accountability.

Within each LWDA, the LWDB and the Commission must find all providers of training services to be eligible and qualified to provide a training program before WIA funds may be used to pay for services provided by that training program. All providers must submit written applications in order for eligibility to be determined.

As described in §841.38, the LWDBs will develop an application to be used in two situations. The first situation is that of institutions which are eligible to receive federal funds under Title IV of the Higher Education Act of 1965 and which provide a program that leads to an associate degree, baccalaureate degree, or certificate, when those institutions are seeking to be certified as an eligible provider for a program leading to an associate degree, baccalaureate degree, or certification. The second situation occurs when an entity that carries out programs under the National Apprenticeship Act is seeking certification as an eligible provider for a program under the National Apprenticeship Act.

A second application process, described in §841.39, is used in three situations. The first is when a post-secondary school is seeking certification as an eligible provider for a program which does not lead to an associate degree, baccalaureate degree, or certification. The second is when an entity that carries out programs under the National Apprenticeship Act is seeking certification as an eligible provider of a program which is not regulated under the National Apprenticeship Act. The third is when any other public or private provider of training services, including community-

based and faith-based organizations, seeks to be certified as an eligible provider of training services.

The Commission solicited and received comments and input into the development of the provider certification procedures through meetings with representatives of community colleges, proprietary schools, literacy training providers, apprenticeship programs and LWDBs; the creation and maintenance of a website on the Internet; and a public hearing held on March 11, 1999. The Commission adopted rules for early implementation of WIA, which became effective June 22, 1999.

The amendments are adopted under Texas Labor Code §301.061 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs.

§841.2. Definitions.

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

- (1) Administrative costs -- The necessary and allowable costs that are associated with the overall management and administration of the workforce investment system and which are not related to the direct provision of employment and training services, as further defined by the federal regulations and subject to the cost limitations set forth in WIA §134(a)(3)(B) and the cost principles set forth in WIA §184(a)(2)(B).
- (2) Certificate -- For the purpose of establishing initial eligibility under §841.38, a document or other proof provided by an educational institution or other training provider awarded after successful completion of a course, sequence of courses or program that is a minimum of 144 non-credit clock/contact hours or 9 credit hours in length.
- (3) Certified provider -- A training provider certified as eligible to receive training funds as authorized under WIA and state rules.
- (4) Commission -- The Texas Workforce Commission as established in the Texas Labor Code, §301.001 and designated by the Governor as the state administrative agency for WIA in Texas.
- (5) Complainant -- Any participant or other personally interested or personally affected party alleging a non-criminal violation of the requirements of WIA.

(6) Completion -- Finishing a program or course of study and receiving a formal credential as currently recognized by the Commission, a designated partner agency or State regulatory board.

(7) Customized Training -- As defined in WIA §101(8), training that is designed to meet the requirements of an employer, conducted with a commitment by the employer to employ an individual on successful completion of the training and for which the employer pays not less than 50 percent of the cost of the training.

(8) Hearing Officer -- An impartial party who shall preside at a hearing on a grievance.

(9) ITAs -- Individual Training Accounts.

(10) LWDA -- Local Workforce Development Area designated by the Governor as provided in Texas Government Code §2308.252.

(11) LWDB -- Local Workforce Development Board created pursuant to Texas Government Code §2308.253 and certified by the Governor pursuant to Texas Government Code §2308.261.

(12) On-the-Job Training -- As defined in WIA §101(31), training by an employer that is provided to a paid participant while engaged in productive work in a job.

(13) One-Stop Partner -- An entity which makes services available to participants through a one-stop delivery system under the terms of a memorandum of agreement with a LWDB.

(14) Participant -- As defined in WIA §101(34), an individual who has been determined to be eligible to participate in, and who is receiving services under, a program authorized by WIA.

(15) Performance Standards -- The minimum acceptable levels of performance based on established measures of performance as described in WIA §122.

(16) Respondent -- The person, organization or agency against which a complaint has been filed for the alleged violation of the requirements of WIA.

(17) WIA -- Workforce Investment Act, P.L. 105-220, 29 U.S.C.A. §2801, et seq.