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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 statutes
12 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 §116(d)(4);
20
21 (C) data validation as described in WIOA §116(d)(5);
22
23 (D) publication of performance reports as described in WIOA §116(d)(6)(B);
24 and
25
26 (E) training services for adults and dislocated workers as described in WIOA
27 §134(c)(3);
28
- 29 (2) 20 CFR Part 680, Subparts B - D, which describe training services, training
30 providers, and individual training accounts;
31
- 32 (3) 20 CFR §681.550, which allows the provision of training services to out-of-
33 school youth, ages 16 to 24, through Individual Training Accounts (ITA); and
34
- 35 (4) the Family Educational Rights and Privacy Act (described in 20 CFR 99) audit
36 or evaluation exception to disclose Personally Identifiable Information (PII)
37 from education records for WIOA performance accountability purposes. This
38 authority is further clarified in joint guidance released by the US Department
39 of Labor (DOL) and the US Department of Education (ED).
40
- 41 (c) The rules contained in this chapter shall apply to the Agency, Local Workforce
42 Development Boards (Boards), and providers of training services for WIOA Adults
43 and Dislocated Workers. At the discretion of the Board, the Eligible Training
44 Provider System (ETPS) may be applied to the delivery of training services funded
45 through the Commission, including WIOA Youth Program out-of-school youth and

1 in-school youth, Choices, Supplemental Nutrition Assistance Program - Employment
2 and Training (SNAP E&T), and Trade Adjustment Assistance (TAA).

3
4 *The provisions of this §840.1 adopted to be effective January 4, 2021, 46 TexReg 195*

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7
8 **§840.2. Definitions.**

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

- 12
- 13 (1) Address of record--In addition to the mailing address contained in the
14 application for approval, each provider shall establish an email address of
15 record, with the format of the address to be
16 "ProviderName.Director@xdomain." This email address of record must
17 consistently include a minimum of two current recipients. Providers currently
18 licensed with TWC's Career Schools and Colleges (CSC) program must use
19 their CSC-approved email of record.
20
 - 21 (2) Agency--The unit of state government established under Texas Labor Code,
22 Chapter 301, that is presided over by the Commission and administered by the
23 executive director to operate the integrated workforce development system and
24 administer the unemployment compensation insurance program in this state as
25 established under the Texas Unemployment Compensation Act, Texas Labor
26 Code Annotated, Title 4, Subtitle A, as amended. The definition of Agency
27 shall apply to all uses of the term 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), that is
31 representative of a community or a significant segment of a community and
32 that has demonstrated expertise and effectiveness in the field of workforce
33 development.
34
 - 35 (4) Customized Training--As defined in WIOA §3(14), means training:
36
 - 37 (A) that is designed to meet the specific requirements of an employer
38 (including a group of employers);
 - 39 (B) that is conducted with a commitment by the employer to employ an
40 individual upon successful completion of the training; and
 - 41 (C) for which the employer pays:
42
 - 43 (i) a significant portion of the cost of training, as determined by the
44 local Board, taking into account the size of the employer and such
45 other factors that the local Board determines to be appropriate,
46
47

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

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

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

17 (6) Eligible Training Provider List (ETPL)--The statewide list of ETPs that may
18 receive funds through individual training accounts for training services at the
19 discretion of Boards and as defined by this chapter.
20

21 (7) Individual Training Account (ITA)--Payment agreement established by a local
22 Board on behalf of a participant with a training provider. ITAs may be used
23 only to pay for a training program included on the statewide ETPL, except
24 where an out-of-state program is approved by the Board in accordance with
25 §840.53 of this chapter (relating to Compliance Violations).
26

27 (8) LWDA--Local Workforce Development Area (workforce area) designated by
28 the governor as provided in Texas Government Code, §2308.252.
29

30 (9) LWDB--Local Workforce Development Board (Board) created pursuant to
31 Texas Government Code, §2308.253, and certified by the governor pursuant to
32 Texas Government Code, §2308.261.
33

34 (10) On-the-Job Training (OJT)--As defined by WIOA §3(44), a training by an
35 employer that is provided to a paid participant while engaged in productive
36 work in a job that:
37

38 (A) provides knowledge or skills essential to the full and adequate
39 performance of the job;
40

41 (B) is made available through a program that provides the employer with
42 partial reimbursement of the wage rate of the participant for the
43 extraordinary costs of providing the training and additional supervision
44 related to the training; and
45

46 (C) is limited in duration as appropriate to the occupation for which the
47 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 (11) 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 occupation
16 described in subparagraph (A) of this paragraph.

17
18 (12) 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 must
20 be one of the following entities:

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

24
25 (B) an entity that carries out programs registered under the Act of August 16,
26 1937 (commonly known as the "National Apprenticeship Act"; 50 Stat.
27 664, 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 under
37 WIOA Title II, if such activities are provided in combination with
38 occupational skills training.

39
40 (13) 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
47 (C) incumbent worker training;

- 1
2 (D) programs that combine workplace training with related instruction,
3 which may include cooperative education programs;
4
5 (E) training programs operated by the private sector;
6
7 (F) skill upgrading and retraining;
8
9 (G) entrepreneurial training;
10
11 (H) transitional jobs;
12
13 (I) job readiness training provided in combination with any services
14 described in subparagraphs (A) - (H) of this paragraph;
15
16 (J) adult education and literacy activities, including activities of English
17 language acquisition and integrated education and training programs,
18 provided concurrently or in combination with any services described in
19 subparagraphs (A) - (H) of this paragraph;
20
21 (K) customized training conducted with a commitment by an employer or
22 group of employers to employ an individual upon successful completion
23 of the training.

24
25 (14) WIOA--Workforce Innovation and Opportunity Act, PL 113 - 128, 29 USCA
26 §3101, et seq., enacted July 22, 2014.
27
28

29 *The provisions of this §840.2 adopted to be effective January 4, 2021, 46 TexReg 195;*
30 *amended to be effective July 18, 2022, 47 TexReg 4142*
31

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33

34 **SUBCHAPTER B. TRAINING PROVIDER ELIGIBILITY**

35 **§840.10. Appropriate Licensure.**

- 36
37
38 (a) Training providers, as defined by this chapter, shall provide evidence of appropriate
39 licensure or exemption from licensure or regulation in a manner determined by the
40 Commission.
41
42 (b) Institutions and agencies included in Texas Education Code, §61.003 shall be
43 considered appropriately licensed for the purposes of this section.
44
45 (c) Proprietary Schools in compliance with the requirements of Texas Education Code
46 Chapter 132 shall be considered appropriately licensed for the purposes of this
47 section.

- 1
2 (d) Registered Apprenticeship Programs (RAPs) approved by the DOL are exempt from
3 all requirements of this section. Industry Recognized Apprenticeship Programs
4 (IRAPs) must comply with licensure and eligibility requirements described in this
5 section.
6

7 *The provisions of this §840.10 adopted to be effective January 4, 2021, 46 TexReg 195*

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10
11 **§840.11. Eligibility of Training Providers.**

- 12
13 (a) Training providers shall provide one or more training services, as defined in this
14 chapter, to be considered eligible for the statewide ETPL.
15
16 (b) Training providers shall submit information required by the Agency for
17 determination of eligibility. This information shall be submitted in a manner
18 determined by the Agency.
19
20 (c) Boards and the Agency shall review information submitted by training providers in
21 order to determine eligibility.
22

23 *The provisions of this §840.11 adopted to be effective January 4, 2021, 46 TexReg 195*

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26
27 **SUBCHAPTER C. TRAINING PROGRAM ELIGIBILITY**

28
29 **§840.20. Initial Eligibility Consideration.**

- 30
31 (a) All training programs that have not previously been determined eligible for the
32 statewide ETPL shall submit such eligibility criteria and performance information
33 required by the Agency. This information shall be submitted in a manner determined
34 by the Agency.
35
36 (b) Eligibility criteria shall include:
37
38 (1) a connection to statewide targeted occupations;
39
40 (2) a partnership with businesses in Texas, in accordance with Agency guidance;
41 and
42
43 (3) other criteria required by the Commission.
44
45 (c) Performance information shall include such requirements as determined necessary
46 by the Agency.

- 1
2 (d) The Agency may exempt a program from the performance information requirement
3 for initial eligibility determination. Such exemption may be applied when a program
4 has not been connected to any students or when such connection is of insufficient
5 duration to calculate performance.
6
7 (e) The Commission may determine minimum performance targets for initial eligibility
8 for the statewide ETPL.
9
10 (f) Boards and the Agency shall review program eligibility criteria and aggregated
11 performance information submitted by training programs in order to determine
12 eligibility.
13
14 (g) Training programs determined eligible under this subchapter shall be approved for
15 inclusion on the statewide ETPL for up to 12 months following approval by the
16 Agency.
17
18 (h) Following the initial eligibility period, training programs shall be subject to
19 continued eligibility determination.
20

21 *The provisions of this §840.20 adopted to be effective January 4, 2021, 46 TexReg 195*

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24
25 **§840.21. Continued Eligibility Consideration.**

- 26
27 (a) Training programs shall be subject to continued eligibility determination within 12 to
28 24 months following previous eligibility determination, as determined by the
29 Agency.
30
31 (b) The Agency shall use such information provided during the most recent annual
32 performance reporting period, including provider and program eligibility and student
33 performance outcomes, for continued eligibility consideration.
34
35 (c) Eligibility criteria shall include:
36
37 (1) such information required for Initial Eligibility determination;
38
39 (2) such additional criteria included in 20 CFR §680.460; and
40
41 (3) other criteria required by the Agency deemed necessary to determine a
42 provider's eligibility.
43
44 (d) Training programs shall submit, through annual reporting, required performance
45 information, which shall include, but may not be limited to, the following:
46

- 1 (1) Information on recognized postsecondary credentials received by participants;
2 and
3
4 (2) Such information required by and developed from annual reporting.
5
6 (e) The Commission shall determine minimum performance targets for continued
7 eligibility for the statewide ETPL. The Commission may review and adjust
8 established minimum performance targets as determined necessary for the efficient
9 operation of the program.
10
11 (f) Boards and the Agency shall review aggregated performance information submitted
12 by training programs to determine whether the information meets or exceeds the
13 program eligibility criteria and shall notify providers of any adverse determination in
14 accordance with Subchapter F of this chapter (relating to Adverse Actions).
15
16 (g) Training programs determined eligible under this subchapter shall be approved for
17 inclusion on the statewide ETPL for up to 24 months following approval by the
18 Agency.
19

20 *The provisions of this §840.21 adopted to be effective January 4, 2021, 46 TexReg 195*

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23

24 **§840.22. Registered Apprenticeship Programs.**
25

- 26 (a) DOL-approved RAPs shall submit the following information to the Agency for
27 program inclusion on the statewide ETPL:
28
29 (1) Name and address of the RAP sponsor;
30
31 (2) Name and address of related technical instruction provider, if different from
32 sponsor;
33
34 (3) Cost of instruction, where instruction is not provided directly by sponsor;
35
36 (4) Related occupations;
37
38 (5) Method and length of instruction;
39
40 (6) Number of active apprentices; and
41
42 (7) Other information required by the Agency not expressly prohibited by DOL.
43
44 (b) RAPs are exempt from all other requirements of this subchapter.
45

- 1 (c) RAPs may voluntarily provide performance and other information to the Agency.
2 Such information will be included on the statewide ETPL as appropriate.
3

4 *The provisions of this §840.22 adopted to be effective January 4, 2021, 46 TexReg 195*
5

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7

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

- 10 (a) The Commission may apply additional requirements to training programs for
11 inclusion on the statewide ETPL.
12
13 (b) Additional requirements developed under this subsection shall be applied to ETP
14 programs during Initial or Continued Eligibility determinations.
15

16 *The provisions of this §840.23 adopted to be effective January 4, 2021, 46 TexReg 195*
17

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19

20 **SUBCHAPTER D. ANNUAL REPORTING**
21

22 **§840.30. Annual Performance Reporting Requirement.**
23

- 24 (a) Each year, all training providers and programs included on the statewide ETPL shall
25 submit all information determined necessary by the Agency. Such information shall
26 include, at a minimum, student-level data for each program.
27
28 (b) Required student-level data may include the following:
29
30 (1) First name of student;
31
32 (2) Last name of student;
33
34 (3) Student's Social Security number (SSN), except where unavailable;
35
36 (4) Student's first date of attendance;
37
38 (5) Student's last date of attendance, when applicable;
39
40 (6) Type of recognized credential earned and the date on which it was received,
41 when applicable; and
42
43 (7) Other information as determined by the Agency.
44
45 (c) The Agency shall use student-level data submitted by providers to determine
46 performance outcomes for provider programs. The student SSN shall be used to

1 verify employment-related outcomes. Such performance outcomes shall include for
2 WIOA participants and students in general:

- 3
- 4 (1) Program completion rate;
 - 5
 - 6 (2) Percentage in unsubsidized employment during the second quarter after exit
7 from the program;
 - 8
 - 9 (3) Percentage in unsubsidized employment during the fourth quarter after exit
10 from the program;
 - 11
 - 12 (4) Median earnings of those in unsubsidized employment during the second
13 quarter after exit from the program;
 - 14
 - 15 (5) Percentage obtaining a recognized postsecondary credential or high school
16 equivalency during participation in or within one year after exit from the
17 program; and
 - 18
 - 19 (6) Other performance outcomes required by the Agency.
- 20

21 *The provisions of this §840.30 adopted to be effective January 4, 2021, 46 TexReg 195*

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

- 26
- 27 (a) The Agency shall determine the date and method of reporting.
 - 28
 - 29 (b) Boards and training providers shall be notified of the annual reporting requirements
30 not less than 30 days prior to the deadline set by the Agency.
 - 31
 - 32 (c) The Agency shall determine the method of notification, which may include public
33 release, formal guidance, address of record email notification, or other methods.
 - 34
 - 35 (d) Providers are responsible for maintaining accurate contact information for locations
36 and programs in order that the Agency may provide such notifications. This includes,
37 but may not be limited to, email address of record.
 - 38
 - 39 (e) Providers of training programs unable to report prior to the annual reporting deadline
40 set by the Agency may request an extension or exemption from reporting caused by
41 circumstances beyond the provider's control, which may include:
 - 42
 - 43 (1) natural disaster or other state emergency;
 - 44
 - 45 (2) unexpected personnel transitions;
- 46

1 (3) unexpected technology-related issues; or

2
3 (4) other circumstances determined acceptable by the Agency.

4
5 (f) Providers shall request an extension for, or exemption from, annual performance
6 reporting within 30 days of the occurrence reason--but no later than the required
7 reporting date--for consideration by the Agency.

8
9 (g) Failure to submit required information in accordance within Agency-determined
10 time lines shall result in removal of affected training programs from the statewide
11 ETPL for not less than two years (24 months).

12
13 *The provisions of this §840.31 adopted to be effective January 4, 2021, 46 TexReg 195*

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16
17 **SUBCHAPTER E. STATEWIDE ELIGIBLE TRAINING PROVIDER LIST**

18
19 **§840.40. Statewide ETPL.**

20
21 (a) The statewide ETPL shall contain all eligible programs submitted by training
22 providers, once approved, to provide services through ITAs to WIOA participants.

23
24 (b) In order to provide usable information for WIOA participants, and students in
25 general, the statewide ETPL shall contain such program information required by the
26 Agency.

27
28 (c) Performance information provided to the Agency on an eligible provider's programs
29 shall be included with the statewide ETPL provided that such information does not
30 reveal personally identifiable information of students.

31
32 (d) The statewide ETPL shall include such RAPs approved by the Agency in accordance
33 with this chapter.

34
35 *The provisions of this §840.40 adopted to be effective January 4, 2021, 46 TexReg 195*

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38
39 **§840.41. Distribution of the Statewide ETPL.**

40
41 (a) The Agency shall make the statewide ETPL available to the public, secondary, and
42 postsecondary educational systems and its other partners through the Agency's
43 website.

44
45 (b) Updates to the statewide ETPL will be published at a frequency determined by the
46 Agency, but not less than monthly.

- 1
2 (c) The Agency shall provide the statewide ETPL in a format accessible to individuals
3 with disabilities.
4
5 (d) Boards shall ensure that the statewide ETPL is locally available in a current and
6 accessible format.
7
8 (e) Boards shall make the statewide ETPL available to the following:
9
10 (1) Local Workforce Solutions Offices and staff;
11
12 (2) Local partners, including those providing training or related services;
13
14 (3) Program participants; and
15
16 (4) The public.
17
18 (f) Boards shall ensure that the statewide ETPL is made available to WIOA program
19 participants eligible for training even when local information is developed, in
20 accordance with §840.61 of this chapter (relating to Individual Training Accounts).
21

22 *The provisions of this §840.41 adopted to be effective January 4, 2021, 46 TexReg 195*
23

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25

26 **§840.42. Removal from the Statewide ETPL.**
27

- 28 (a) Voluntary Removal. Providers may request that a program be removed from the
29 statewide ETPL. Such requests shall:
30
31 (1) be submitted by a provider in a manner determined by the Agency; and
32
33 (2) be processed in a manner determined by the Agency.
34
35 (b) Programs voluntarily removed from the statewide ETPL may be redetermined for
36 inclusion following such request from an eligible provider.
37
38 (c) Removal for Cause. Providers and programs may be removed from the statewide
39 ETPL in accordance with Subchapter F of this chapter (relating to Adverse Actions).
40
41 (d) Programs involuntarily removed from the statewide ETPL may be redetermined for
42 inclusion following the removal period included in Subchapter F of this chapter. At
43 such time, programs shall submit such information required by the Commission to
44 determine current eligibility for reentry on the statewide ETPL.
45

- 1 (e) Removed programs that are provided reentry to the statewide ETPL will need to
2 meet the continued eligibility requirements for purposes of eligibility determination
3 and performance reporting.
4

5 *The provisions of this §840.42 adopted to be effective January 4, 2021, 46 TexReg 195*
6

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9 **SUBCHAPTER F. ADVERSE ACTIONS**
10

11 **§840.50. Eligibility Actions.**
12

- 13 (a) Removal of a program for failure to meet eligibility criteria shall occur following the
14 end of the initial or continued eligibility period for such program, except where
15 otherwise described in this subchapter.
16
17 (b) The Board or Agency may review or reverse previous decisions if the provider
18 submits new information that may affect the eligibility of such programs.
19
20 (c) RAPs shall be removed under this section only if such programs become
21 deregistered under the National Apprenticeship Act.
22

23 *The provisions of this §840.50 adopted to be effective January 4, 2021, 46 TexReg 195*
24

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26

27 **§840.51. Reporting Actions.**
28

- 29 (a) Failure to submit required annual reporting information, including performance
30 outcomes, in accordance with Agency-determined timelines shall result in removal
31 of affected programs from the statewide ETPL for not less than two years.
32
33 (b) Failure to submit information for any individual program shall result in the removal
34 of such program.
35
36 (c) Removal shall occur following the end of the reporting period, as determined by the
37 Agency.
38
39 (d) Registered Apprenticeship Programs shall be exempt from actions taken under this
40 section.
41

42 *The provisions of this §840.51 adopted to be effective January 4, 2021, 46 TexReg 195;*
43 *amended to be effective July 18, 2022, 47 TexReg 4142*
44

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46

1 **§840.52. Performance Actions.**

- 2
- 3 (a) Failure to meet or exceed any performance requirements set by the Commission may
- 4 result in:
- 5
- 6 (1) removal of a program from the statewide ETPL, for a period of time
- 7 determined by the Agency; or
- 8
- 9 (2) placement in a temporary performance improvement plan at the Agency's
- 10 discretion.
- 11
- 12 (b) Removal shall occur following the end of the reporting period or performance
- 13 improvement plan, as determined by the Agency.
- 14
- 15 (c) RAPs, including those voluntarily providing performance information to the
- 16 Commission, shall be exempt from actions taken under this section.
- 17

18 *The provisions of this §840.52 adopted to be effective January 4, 2021, 46 TexReg 195*

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21

22 **§840.53. Compliance Violations.**

23

- 24 (a) Training providers shall comply with all nondiscrimination protections included in
- 25 WIOA §188.
- 26
- 27 (b) Training providers shall designate the Agency as an authorized representative under
- 28 the Family Educational Rights and Privacy Act regarding the disclosure of education
- 29 records to be used for audit and/or evaluation purposes and for performance
- 30 reporting and program evaluation under WIOA and in accordance with 34 Code of
- 31 Federal Regulations, Part 99.
- 32
- 33 (c) The Agency shall require providers to submit an acknowledgment of compliance
- 34 requirements, addressed in subsections (a) and (b) of this section, at initial eligibility
- 35 determination in electronic format, or by such other means determined by the
- 36 Agency.
- 37
- 38 (d) The Agency shall require providers to submit an acknowledgment of compliance
- 39 requirements, addressed in subsections (a) and (b) of this section, during annual
- 40 report submission in electronic format or by such other means determined by the
- 41 Agency.
- 42
- 43 (e) A local Board or the Agency may determine if a provider has violated any protection
- 44 provided by WIOA §188. If such determination is made, the provider will be
- 45 considered to have substantially violated the rules of this chapter.
- 46

- 1 (f) Providers determined to have substantially violated the rules of this chapter shall
2 have their programs removed from the statewide ETPL immediately. Removal for
3 such violation shall be for not less than two years.
- 4
- 5 (g) Providers that are no longer licensed in accordance with §840.10 of this chapter
6 (relating to Appropriate Licensure) shall have their programs immediately removed
7 from the statewide ETPL.
- 8
- 9 (h) The Agency may require providers that have been determined to have violated the
10 rules of this chapter to repay any funds provided under this chapter during the period
11 of such violation.
- 12

13 *The provisions of this §840.53 adopted to be effective January 4, 2021, 46 TexReg 195;*
14 *amended to be effective July 18, 2022, 47 TexReg 4142*

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18 **§840.54. Continuation of Students in Removed Programs.**

19

- 20 (a) Students enrolled in a program removed under this subchapter, except §840.53 of
21 this subchapter (relating to Compliance Violations), shall be allowed to continue in
22 training when the ITA was encumbered before such removal.
- 23
- 24 (b) For programs removed under §840.53 of this subchapter, the Agency may require
25 that students be discontinued following removal. Boards may place a student
26 affected by program removal into a similar program, in accordance with local
27 policies, when available.
- 28

29 *The provisions of this §840.54 adopted to be effective January 4, 2021, 46 TexReg 195;*
30 *amended to be effective July 18, 2022, 47 TexReg 4142*

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33

34 **§840.55. Right of Appeal.**

35

- 36 (a) Providers or programs, as defined by this chapter, shall have the right to appeal
37 adverse actions included in this subchapter, in accordance with Chapter 823 of this
38 title (relating to Integrated Complaints, Hearing, and Appeals).
- 39
- 40 (b) Providers subject to removal as a result of any adverse action described in this
41 chapter shall receive notice by the Agency of pending action and their rights to
42 appeal such decision.
- 43

44 *The provisions of this §840.55 adopted to be effective January 4, 2021, 46 TexReg 195*

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1
2 **SUBCHAPTER G. STATE AND LOCAL FLEXIBILITY**
3

4 **§840.60. Determining Target Occupations.**
5

- 6 (a) Annually, each Board shall adopt a list of target occupations in the LWDA.
7
8 (b) In adopting the list of target occupations, the Board:
9
10 (1) shall consider labor market information provided by the Agency; and
11
12 (2) may consider additional local information which may include, but is not
13 limited to:
14
15 (A) information provided by businesses and business organizations;
16
17 (B) information provided by workers and worker organizations; or
18
19 (C) information provided by economic development or occupational
20 organization partners.
21
22 (c) The Agency shall maintain the target occupation lists for each LWDA, including any
23 updates provided by Boards. The target occupation list from each Board shall be
24 compiled into a single statewide target occupation list.
25

26 *The provisions of this §840.60 adopted to be effective January 4, 2021, 46 TexReg 195*
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30 **§840.61. Individual Training Accounts.**
31

- 32 (a) A participant determined eligible for training may use an ITA to pay for the cost of
33 training programs that are:
34
35 (1) included on the statewide ETPL; or
36
37 (2) locally approved out-of-state programs.
38
39 (b) ITAs shall include only those costs required for successful completion of training
40 programs, which are paid directly to providers of programs on the statewide ETPL or
41 locally approved out-of-state programs.
42
43 (c) All changes to a program, including any increase in program costs, must be included
44 on the ETPL prior to issuance of an ITA.
45
46 (d) Boards shall ensure that the ITA allowance does not exceed training costs listed on
the ETPL for programs at the time of student enrollment.

- 1
2 (e) Additional costs related to training programs may be paid using support services
3 funds, in accordance with existing guidance.
4
5 (f) Boards may apply additional criteria to training programs beyond those included in
6 this chapter. Such additional criteria may include limitations on the:
7
8 (1) cost of training programs; and
9
10 (2) length of training programs.
11
12 (g) Boards shall ensure that participants and training providers are informed that WIOA
13 training funds are not available unless the Board has approved and issued an ITA to
14 the training provider or eligible participant.
15

16 *The provisions of this §840.61 adopted to be effective January 4, 2021, 46 TexReg 195;*
17 *amended to be effective July 18, 2022, 47 TexReg 4142*
18

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20

21 **§840.62. Training Contracts.**
22

- 23 (a) Training contracts may be used to fund training programs, listed in this section, for
24 participants instead of ITAs.
25
26 (b) Boards shall provide participants with access to the statewide ETPL and training
27 contracts as applicable to ensure consumer choice.
28
29 (c) When the Local Plan describes the process to be used in selecting providers under
30 such contract, a Board may contract with training programs under the following
31 circumstances:
32
33 (1) The training program is an OJT, customized training, incumbent worker
34 training, or transitional jobs training; or
35
36 (2) The Board determines that:
37
38 (A) there is an insufficient number of ETPs in the workforce area to
39 accomplish the purposes of a system of ITAs;
40
41 (B) there is a training program with demonstrated effectiveness offered in
42 Board area by a community-based organization or other private
43 organization to serve individuals with barriers to employment;
44
45 (C) it would be most appropriate to award a contract to an institution of
46 higher education or other provider of training services to facilitate the

1 training of multiple individuals in one or more in-demand industry
2 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) of
8 this section shall be considered exempt from the information and performance
9 requirements required by this chapter.

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

14
15 *The provisions of this §840.62 adopted to be effective January 4, 2021, 46 TexReg 195*

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18
19 **§840.63. Local Training Program Information.**

20
21 (a) Boards may develop and maintain supplementary information for local programs
22 eligible for Board ITA funds.

23
24 (b) The following programs may be included:

25
26 (1) Any programs included on the statewide ETPL; and

27
28 (2) Out-of-state programs, in accordance with §840.64 of this subchapter (relating
29 to Out-of-State Training Programs).

30
31 (c) Such local information shall:

32
33 (1) not limit consumer choice;

34
35 (2) not restrict participant access to RAPs included on the statewide ETPL; and

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

40
41 *The provisions of this §840.63 adopted to be effective January 4, 2021, 46 TexReg 195*

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44
45 **§840.64. Out-of-State Training Programs.**

- 1 (a) The Agency shall not include out-of-state providers without any physical training
2 locations in Texas on the statewide ETPL.
3
- 4 (b) The Agency may allow Boards to fund out-of-state programs through ITAs when the
5 following conditions are met:
6
- 7 (1) The training program is included on an ETPL in another state or US territory at
8 the time of student enrollment;
9
 - 10 (2) The training program is aligned with a local target occupation, or target
11 occupation in an area to which the participant is willing to commute or
12 relocate, provided that such location is in Texas;
13
 - 14 (3) The training program provides performance information, in such a manner as
15 determined by the Agency, that demonstrates the program meets or exceeds
16 any Commission-established minimum performance standards;
17
 - 18 (4) The training program has an existing partnership with a local employer in the
19 workforce area, as documented by a letter of support or existence of an
20 employer advisory committee;
21
 - 22 (5) The Board has submitted such required information for the out-of-state
23 program in such manner determined by the Agency;
24
 - 25 (6) The Agency executive director has reviewed and approved the out-of-state
26 program for ITA eligibility;
27
 - 28 (7) The out-of-state provider and related programs meet ETP eligibility
29 requirements in accordance with Subchapter B of this chapter (relating to
30 Training Provider Eligibility);
31
 - 32 (8) Other conditions as required by the Agency; and
33
 - 34 (9) Board policy exists that sufficiently addresses such requirements described in
35 this section.
36
- 37 (c) A Board may fund out-of-state training programs through training contracts in
38 accordance with §840.61 of this subchapter (relating to Individual Training
39 Accounts).
40

41 *The provisions of this §840.64 adopted to be effective January 4, 2021, 46 TexReg 195*
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