

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

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- 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38 (WIA), which was repealed by Congress with the passage of WIOA.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](mailto: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); and

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  
33 **§840.40. Statewide ETPL.**

- 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.

45

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

40  
41          (d) 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  
37            (A) there is an insufficient number of ETPs in the workforce area to  
38            accomplish the purposes of a system of ITAs;

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

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

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  
2  
3  
4  
5  
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7  
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26

(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).