

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

2
3 **PROPOSED RULES TO BE PUBLISHED IN THE *TEXAS REGISTER*. THIS**
4 **DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT TO**
5 **FORMATTING CHANGES AS REQUIRED BY THE OFFICE OF THE**
6 **SECRETARY OF STATE.**

7
8 ON **MARCH 8, 2022**, THE TEXAS WORKFORCE COMMISSION APPROVED THE
9 PROPOSED RULES BELOW WITH PREAMBLE TO BE PUBLISHED IN THE *TEXAS*
10 *REGISTER*.

11
12 Publication Date of the Proposal in the *Texas Register*: **March 25, 2022**
13 End of Comment Period: **April 25, 2022**

14
15 The Texas Workforce Commission (TWC) proposes amendments to Chapter 840, relating to
16 WIOA Eligible Training Providers, as follows:

- 17
18 Subchapter A. General Provisions, §840.2
19 Subchapter F. Adverse Actions, §§840.51, 840.53, and 840.54
20 Subchapter G. State and Local Flexibility, §840.61

21
22 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

23 TWC's Chapter 840 addresses the requirements of training services provided through the
24 Workforce Innovation and Opportunity Act (WIOA). The chapter became effective on
25 January 4, 2021.

26
27 The amendments to Chapter 840 will clarify the requirements for participants, Local
28 Workforce Development Boards (Boards), and eligible training providers (ETPs) engaged
29 with TWC's statewide Eligible Training Provider List (ETPL) specifically, and the ETP
30 system in general.

31
32 Chapter 840 describes rules for the provision of training services funded through TWC as
33 required by WIOA §§116, 122, and 134; 20 Code of Federal Regulations (CFR) Part 680,
34 Subparts B - D; and 20 CFR §681.550.

35
36 Communication with Boards and ETPs indicates that enhancements to Chapter 840 relating
37 to the local administration of training services provided through the ETPL will be beneficial
38 to the effective administration of the ETP system and statewide ETPL.

39
40 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

41 (Note: Minor editorial changes are made that do not change the meaning of the rules and,
42 therefore, are not discussed in the Explanation of Individual Provisions.)

43
44 **SUBCHAPTER A. GENERAL PROVISIONS**

45 TWC proposes the following amendments to Subchapter A:
46

1 **§840.2. Definitions**

2 Section 840.2 is amended to add the definition for "eligible training provider list" and the
3 subsequent paragraphs are renumbered accordingly.

4
5 **SUBCHAPTER F. ADVERSE ACTIONS**

6 TWC proposes the following amendments to Subchapter F:

7
8 **§840.51. Reporting Actions**

9 Section 840.51 (a) and (d) are amended to make technical corrections to the language.

10
11 **§840.53. WIOA Violations**

12 Section 840.53 is amended to rename the section "Compliance Violations." New §840.53(b)
13 is added to explicitly require providers to acknowledge TWC's authority under the Family
14 Educational Rights and Privacy Act to receive education records. Relettered §840.53(c) and
15 (d) are amended to require providers to submit acknowledgement of §840.53(a) and
16 proposed §840.53(b) requirements during initial eligibility determination and annual
17 reporting periods. New §840.53(g) is added to clarify that providers no longer meeting the
18 requirements in §840.10 will be removed from the statewide ETPL.

19
20 **§840.54. Continuation of Students in Removed Programs**

21 Section 840.54 is amended to update the relating to statement for the reference to §840.53
22 from "WIOA Violations" to "Compliance Violations."

23
24 **SUBCHAPTER G. STATE AND LOCAL FLEXIBILITY**

25 TWC proposes the following amendments to Subchapter G:

26
27 **§840.61. Individual Training Accounts**

28 Section 840.61 is amended to add subsection (c) to clarify that all changes to program costs
29 must be included on the statewide ETPL and add subsection (g) to require that a Board
30 informs participants and training providers that funds are not available unless the Board or
31 Board's fiscal agent has approved and issued an individual training account.

32
33 **PART III. IMPACT STATEMENTS**

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

36
37 There are no additional estimated costs to the state and to local governments expected as a
38 result of enforcing or administering the rules.

39
40 There are no estimated cost reductions to the state and to local governments as a result of
41 enforcing or administering the rules.

42
43 There are no estimated losses or increases in revenue to the state or to local governments as
44 a result of enforcing or administering the rules.

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

3
4 There are no anticipated economic costs to individuals required to comply with the rules.

5
6 There is no anticipated adverse economic impact on small businesses, microbusinesses, or
7 rural communities as a result of enforcing or administering the rules.

8
9 Based on the analyses required by Texas Government Code, §2001.024, TWC determined
10 that the requirement to repeal or amend a rule, as required by Texas Government Code,
11 §2001.0045, does not apply to this rulemaking.

12
13 Takings Impact Assessment

14 Under Texas Government Code, §2007.002(5), "taking" means a governmental action that
15 affects private real property, in whole or in part or temporarily or permanently, in a manner
16 that requires the governmental entity to compensate the private real property owner as
17 provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas
18 Constitution, Article I, §17 or §19, or restricts or limits the owner's right to the property that
19 would otherwise exist in the absence of the governmental action, and is the producing cause
20 of a reduction of at least 25 percent in the market value of the affected private real property,
21 determined by comparing the market value of the property as if the governmental action is
22 not in effect and the market value of the property determined as if the governmental action is
23 in effect. TWC completed a Takings Impact Analysis for the proposed rulemaking action
24 under Texas Government Code, §2007.043. The primary purpose of this proposed
25 rulemaking action, as discussed elsewhere in this preamble, is to amend Chapter 840 to
26 clarify licensure requirements for training providers and the role that a Board plays as the
27 sole approval agent of training funds through individual training accounts.

28
29 The proposed rulemaking action will not create any additional burden on private real
30 property or affect private real property in a manner that would require compensation to
31 private real property owners under the US Constitution or the Texas Constitution. The
32 proposal also will not affect private real property in a manner that restricts or limits an
33 owner's right to the property that would otherwise exist in the absence of the governmental
34 action. Therefore, the proposed rulemaking will not cause a taking under Texas Government
35 Code, Chapter 2007.

36
37 Government Growth Impact Statement

38 TWC determined that during the first five years the rules will be in effect, they will not:

- 39 -- create or eliminate a government program;
40 -- require the creation or elimination of employee positions;
41 -- require an increase or decrease in future legislative appropriations to TWC;
42 -- require an increase or decrease in fees paid to TWC;
43 -- create a new regulation;
44 -- expand, limit, or eliminate an existing regulation;
45 -- change the number of individuals subject to the rules; and
46 -- positively or adversely affect the state's economy.

1
2 Economic Impact Statement and Regulatory Flexibility Analysis

3 TWC determined that the rules will not have an adverse economic impact on small
4 businesses or rural communities, as the proposed rules place no requirements on small
5 businesses or rural communities.

6
7 Mariana Vega, Director, Labor Market Information, determined that there is not a significant
8 negative impact upon employment conditions in the state as a result of the rules.

9
10 Courtney Arbour, Director, Workforce Development Division, determined that for each year
11 of the first five years the rules are in effect, the public benefit anticipated as a result of
12 enforcing the proposed rules will be to ensure the continued availability of workforce-
13 supported high-quality training programs while providing clear operational rules to
14 providers of training programs and their local Board partners.

15
16 TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be
17 within TWC's legal authority to adopt.

18
19 **PART IV. COORDINATION ACTIVITIES**

20 In the development of these rules for publication and public comment, TWC sought the
21 involvement of the Boards. TWC provided the policy concept regarding the rule
22 amendments to the Boards for consideration and review on December 7, 2021. TWC also
23 conducted a conference call with Board executive directors and Board staff on December
24 17, 2021, to discuss the policy concept. During the rulemaking process, TWC considered all
25 information gathered in order to develop rules that provide clear and concise direction to all
26 parties involved.

27
28 **PART V. PUBLIC COMMENT**

29 Comments on the proposed rules may be submitted to
30 TWCPolicyComments@twc.texas.gov and must be received no later than April 25, 2022.

31
32 **PART VI. STATUTORY AUTHORITY**

33 The rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide
34 TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the
35 effective administration of TWC services and activities.

36
37 The rules implement the requirements set out in WIOA §§116, 122, and 134; 20 CFR Part
38 680, Subpart D; and 20 CFR §681.550.

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

2
3 **SUBCHAPTER A. GENERAL PROVISIONS**

4
5 **§840.2. Definitions.**

6
7 The following words and terms, when used in this chapter, shall have the following
8 meanings, unless the context clearly indicates otherwise.

- 9
10 (1) Address of record--In addition to the mailing address contained in the
11 application for approval, each provider shall establish an email address of
12 record, with the format of the address to be
13 "ProviderName.Director@xdomain." This email address of record must
14 consistently include a minimum of two current recipients. Providers
15 currently licensed with TWC's Career Schools and Colleges (CSC)
16 program must use their CSC-approved email of record.
17
18 (2) Agency--The unit of state government established under Texas Labor
19 Code, Chapter 301, that is presided over by the Commission and
20 administered by the executive director to operate the integrated workforce
21 development system and administer the unemployment compensation
22 insurance program in this state as established under the Texas
23 Unemployment Compensation Act, Texas Labor Code Annotated, Title 4,
24 Subtitle A, as amended. The definition of Agency shall apply to all uses of
25 the term in ~~rules contained in~~ this chapter.
26
27 (3) Community-Based~~Community-Based~~ Organization--As defined in WIOA
28 §3(10), a private nonprofit organization (which may include a faith-based
29 organization), that is representative of a community or a significant
30 segment of a community and that has demonstrated expertise and
31 effectiveness in the field of workforce development.
32
33 (4) Customized Training--As defined in WIOA §3(14), means training:
34
35 (A) that is designed to meet the specific requirements of an employer
36 (including a group of employers);
37
38 (B) that is conducted with a commitment by the employer to employ an
39 individual upon successful completion of the training; and
40
41 (C) for which the employer pays:
42
43 (i) a significant portion of the cost of training, as determined by
44 the local Board, taking into account the size of the employer
45 and such other factors that the local Board determines to be
46 appropriate, which may include the number of employees

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

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

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

18 (6) Eligible Training Provider List (ETPL)--The statewide list of ETPs that
19 may receive funds through individual training accounts for training
20 services at the discretion of Boards and as defined by this chapter.
21

22 (7)~~(6)~~ Individual Training Account (ITA)--Payment agreement established by
23 a local Board on behalf of a participant with a training provider. ITAs may
24 be used only to pay for a training program included on the statewide
25 ETPL, except where an out-of-state program is approved by the Board in
26 accordance with §840.53 of this chapter (relating to Compliance~~WIOA~~
27 Violations).
28

29 (8)~~(7)~~ LWDA--Local Workforce Development Area (workforce area)
30 designated by the governor as provided in Texas Government Code,
31 §2308.252.
32

33 (9)~~(8)~~ LWDB--Local Workforce Development Board (Board) created
34 pursuant to Texas Government Code, §2308.253, and certified by the
35 governor pursuant to Texas Government Code, §2308.261.
36

37 (10)~~(9)~~ On-the-Job Training (OJT)--As defined by WIOA §3(44), a training by
38 an employer that is provided to a paid participant while engaged in
39 productive work in a job that:
40

41 (A) provides knowledge or skills essential to the full and adequate
42 performance of the job;
43

44 (B) is made available through a program that provides the employer with
45 partial reimbursement of the wage rate of the participant for the

1 extraordinary costs of providing the training and additional
2 supervision related to the training; and

- 3
4 (C) is limited in duration as appropriate to the occupation for which the
5 participant is being trained, taking into account the content of the
6 training, the prior work experience of the participant, and the service
7 strategy of the participant, as appropriate.
8

9 (11)~~(10)~~ Target Occupations--As determined by LWDA, include:

- 10 (A) occupations that:
11
12 (i) are in-demand, as defined by WIOA §3(23);
13
14 (ii) have a dedicated training component; and
15
16 (iii) provide wages that meet self-sufficiency requirements in the
17 LWDA; or
18
19 (B) occupations that are included in career pathway leading to an
20 occupation described in subparagraph (A) of this paragraph.
21
22

23 (12)~~(11)~~ Training Provider--As set out in WIOA §122(a)(2), provides a
24 program containing one or more training services, as defined by this
25 chapter, and must be one of the following entities:
26

- 27 (A) an institution of higher education that provides a program that leads
28 to a recognized postsecondary credential;
29
30 (B) an entity that carries out programs registered under the Act of
31 August 16, 1937 (commonly known as the "National Apprenticeship
32 Act"; 50 Stat. 664, Chapter~~chapter~~ 663; 29 USC §50 et seq.); or
33
34 (C) another public or private provider of a program of training services,
35 which may include:
36
37 (i) community-based organizations;
38
39 (ii) joint labor-management organizations; and
40
41 (iii) eligible providers of adult education and literacy activities
42 under WIOA Title II, if such activities are provided in
43 combination with occupational skills training.
44

45 (13)~~(12)~~ Training Services--As provided in WIOA §134(c)(3)(D), may include:
46

- (A) occupational skills training, including training for nontraditional employment;
- (B) OJT;
- (C) incumbent worker training;
- (D) programs that combine workplace training with related instruction, which may include cooperative education programs;
- (E) training programs operated by the private sector;
- (F) skill upgrading and retraining;
- (G) entrepreneurial training;
- (H) transitional jobs;
- (I) job readiness training provided in combination with any services described in subparagraphs (A) - (H) of this paragraph;
- (J) adult education and literacy activities, including activities of English language acquisition and integrated education and training programs, provided concurrently or in combination with any services described in subparagraphs (A) - (H) of this paragraph;
- (K) customized training conducted with a commitment by an employer or group of employers to employ an individual upon successful completion of the training.

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

SUBCHAPTER F. ADVERSE ACTIONS

§840.51. Reporting Actions.

- (a) Failure to submit required annual reporting information, including performance outcomes, in accordance ~~with~~within Agency-determined ~~timelines~~time lines shall result in removal of affected programs from the statewide ETPL for not less than two years.
- (b) Failure to submit information for any individual program shall result in the removal of such program.

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

3
4 (d) Registered Apprenticeship Programs~~RAPs~~ shall be exempt from actions taken
5 under this section.

6
7 **§840.53. Compliance~~WIOA~~ Violations.**

8
9 (a) Training providers shall comply with all nondiscrimination protections included
10 in WIOA §188.

11
12 (b) Training providers shall designate the Agency as an authorized representative
13 under the Family Educational Rights and Privacy Act regarding the disclosure of
14 education records to be used for audit and/or evaluation purposes and for
15 performance reporting and program evaluation under WIOA and in accordance
16 with 34 Code of Federal Regulations, Part 99.

17
18 (c)~~(b)~~ The Agency shall require providers to submit an acknowledgment of
19 compliance requirements, addressed in subsections~~subsection~~ (a) and (b) of this
20 section, at initial eligibility determination in electronic format, or by such other
21 means determined by the Agency.

22
23 (d)~~(e)~~ The Agency shall require providers to submit an acknowledgment of
24 compliance requirements, addressed in subsections~~subsection~~ (a) and (b) of this
25 section, during annual report submission in electronic format or by such other
26 means determined by the Agency.

27
28 (e)~~(d)~~ A local Board or the Agency may determine if a provider has violated any
29 protection provided by WIOA §188. If such determination is made, the provider
30 will be considered to have substantially violated the rules of this chapter.

31
32 (f)~~(e)~~ Providers determined to have substantially violated the rules of this chapter
33 shall have their programs removed from the statewide ETPL immediately.
34 Removal for such violation shall be for not less than two years.

35
36 (g) Providers that are no longer licensed in accordance with §840.10 of this chapter
37 (relating to Appropriate Licensure) shall have their programs immediately
38 removed from the statewide ETPL.

39
40 (h)~~(f)~~ The Agency may require providers that have been determined to have
41 violated the rules of this chapter to repay any funds provided under this chapter
42 during the period of such violation.

43
44 **§840.54. Continuation of Students in Removed Programs.**

- 1 (a) Students enrolled in a program removed under this subchapter, except §840.53
2 of this subchapter (relating to Compliance~~WIOA~~ Violations), shall be allowed to
3 continue in training when the ITA was encumbered before such removal.
4
- 5 (b) For programs removed under §840.53 of this subchapter, the Agency may
6 require that students be discontinued following removal. Boards may place a
7 student affected by program removal into a similar program, in accordance with
8 local policies, when available.
9

10 **SUBCHAPTER G. STATE AND LOCAL FLEXIBILITY**

11 **§840.61. Individual Training Accounts.**

- 12
- 13
- 14 (a) A participant determined eligible for training may use an ITA to pay for the cost
15 of training programs that are:
16
- 17 (1) included on the statewide ETPL; or
18
- 19 (2) locally approved out-of-state programs.
20
- 21 (b) ITAs shall include only those costs required for successful completion of
22 training programs, which are paid directly to providers of programs on the
23 statewide ETPL or locally approved out-of-state programs.
24
- 25 (c) All changes to a program, including any increase in program costs, must be
26 included on the ETPL prior to issuance of an ITA.
27
- 28 (d)~~(e)~~ Boards shall ensure that the ITA allowance does not exceed training costs
29 listed on the ETPL for programs at the time of student enrollment.
30
- 31 (e)~~(d)~~ Additional costs related to training programs may be paid using support
32 services funds, in accordance with existing guidance.
33
- 34 (f)~~(e)~~ Boards may apply additional criteria to training programs beyond those
35 included in this chapter. Such additional criteria may include limitations on the:
36
- 37 (1) cost of training programs; and
38
- 39 (2) length of training programs.
40
- 41 (g) Boards shall ensure that participants and training providers are informed that
42 WIOA training funds are not available unless the Board has approved and issued
43 an ITA to the training provider or eligible participant.