

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

2
3 **ADOPTED 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 **JUNE 28, 2022**, THE TEXAS WORKFORCE COMMISSION ADOPTED THE
9 RULES BELOW WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

10
11 Publication Date of the Adoption in the *Texas Register*: **July 15, 2022**

12 The Rules are Effective: **July 18, 2022**

13
14 The Texas Workforce Commission (TWC) adopts amendments to Chapter 840, relating to
15 WIOA Eligible Training Providers:

16
17 Subchapter A. General Provisions, §840.2

18 Subchapter F. Adverse Actions, §§840.51, 840.53, and 840.54

19 Subchapter G. State and Local Flexibility, §840.61

20
21 The amendments to §§840.2, 840.51, 840.53, 840.54, and 840.61 are adopted *without*
22 *changes*, to the proposed text as published in the March 25, 2022, issue of the *Texas*
23 *Register* (47 TexReg 1609), and the adopted rule text will not be published.

24
25 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

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

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

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

38
39 Communication with Boards and ETPs indicated that enhancements to Chapter 840 relating
40 to the local administration of training services provided through the ETPL would be
41 beneficial to the effective administration of the ETP system and statewide ETPL.

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

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

1 **SUBCHAPTER A. GENERAL PROVISIONS**

2 TWC adopts the following amendments to Subchapter A:

3
4 **§840.2. Definitions**

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

7
8 **SUBCHAPTER F. ADVERSE ACTIONS**

9 TWC adopts the following amendments to Subchapter F:

10
11 **§840.51. Reporting Actions**

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

13
14 **§840.53. Compliance Violations**

15 Section 840.53 is amended to rename the section "Compliance Violations." New §840.53(b)
16 is added to explicitly require providers to acknowledge TWC's authority under the Family
17 Educational Rights and Privacy Act to receive education records. Relettered §840.53(c) and
18 (d) are amended to require providers to submit acknowledgement of §840.53(a) and (b)
19 requirements during initial eligibility determination and annual reporting periods. New
20 §840.53(g) is added to clarify that providers no longer meeting the requirements in §840.10
21 will be removed from the statewide ETPL.

22
23 **§840.54. Continuation of Students in Removed Programs**

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

26
27 **SUBCHAPTER G. STATE AND LOCAL FLEXIBILITY**

28 TWC adopts the following amendments to Subchapter G:

29
30 **§840.61. Individual Training Accounts**

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

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

38
39 **PART III. PUBLIC COMMENTS**

40 The public comment period ended on April 25, 2022. TWC received comments from the
41 Tracy Andrus Foundation.

42
43 **§840.2. Definitions**

44
45 **COMMENT:** One organization expressed concern that the phrase "at the discretion of the board" in
46 proposed §840.2(6) was not adequately described and supported with "clear directives to boards on the
47 scope of their discretion."

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RESPONSE: TWC appreciates the comment and will work with Boards to provide guidance and technical assistance as needed.

No changes were made to the rule in response to this comment.

PART IV. STATUTORY AUTHORITY

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

The rules implement the requirements set out in WIOA §§116, 122, and 134; 20 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 **§840.2. 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 this chapter.
26
27 (3) Community-Based Organization--As defined in WIOA §3(10), a private
28 nonprofit organization (which may include a faith-based organization),
29 that is representative of a community or a significant segment of a
30 community and that has demonstrated expertise and effectiveness in the
31 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) Individual Training Account (ITA)--Payment agreement established by a
23 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
27 Violations).
28

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

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

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

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

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

1
2 (C) is limited in duration as appropriate to the occupation for which the
3 participant is being trained, taking into account the content of the
4 training, the prior work experience of the participant, and the service
5 strategy of the participant, as appropriate.
6

7 (11) Target Occupations--As determined by LWDA, include:
8

9 (A) occupations that:
10

11 (i) are in-demand, as defined by WIOA §3(23);
12

13 (ii) have a dedicated training component; and
14

15 (iii) provide wages that meet self-sufficiency requirements in the
16 LWDA; or
17

18 (B) occupations that are included in career pathway leading to an
19 occupation described in subparagraph (A) of this paragraph.
20

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

25 (A) an institution of higher education that provides a program that leads
26 to a recognized postsecondary credential;
27

28 (B) an entity that carries out programs registered under the Act of
29 August 16, 1937 (commonly known as the "National Apprenticeship
30 Act"; 50 Stat. 664, Chapter 663; 29 USC §50 et seq.); or
31

32 (C) another public or private provider of a program of training services,
33 which may include:
34

35 (i) community-based organizations;
36

37 (ii) joint labor-management organizations; and
38

39 (iii) eligible providers of adult education and literacy activities
40 under WIOA Title II, if such activities are provided in
41 combination with occupational skills training.
42

43 (13) Training Services--As provided in WIOA §134(c)(3)(D), may include:
44

45 (A) occupational skills training, including training for nontraditional
46 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) 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 Agency-determined timelines 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.
- (c) Removal shall occur following the end of the reporting period, as determined by the Agency.

1 (d) Registered Apprenticeship Programs shall be exempt from actions taken under
2 this section.
3

4 **§840.53. Compliance Violations.**
5

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

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

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

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

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

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

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

37 (h) The Agency may require providers that have been determined to have violated
38 the rules of this chapter to repay any funds provided under this chapter during
39 the 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 Compliance Violations), shall be allowed to
45 continue in 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 **SUBCHAPTER G. STATE AND LOCAL FLEXIBILITY**
7

8 **§840.61. Individual Training Accounts.**
9

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