

Part 20. TEXAS WORKFORCE COMMISSION

Chapter 841. WORKFORCE INVESTMENT ACT

Subchapter C. ELIGIBLE TRAINING PROVIDER CERTIFICATION SYSTEM

40 TAC §841.39, §841.45

The Texas Workforce Commission (Commission) proposes amendments to §841.39 and §841.45 regarding the Eligible Training Provider Certification System (ETPS) required under the Workforce Investment Act of 1998. A key goal of the federal Workforce Investment Act (WIA) of 1998 (42 U.S.C.A. Section 2801 et seq.) is to improve the effectiveness and efficiency of federally-funded job training programs. WIA recognized Texas state statutes regarding the workforce development system as prior consistent state law. Specifically, the state statutes are grandfathered under the provisions of WIA and are codified primarily in Texas Government Code Chapter 2308 and Texas Labor Code Chapter 302. These state laws create the foundation upon which workforce reform in Texas regarding employment and training service delivery was built. The ETPS is an important component of the workforce reform and employment and training services in Texas.

The Commission has continued to work closely with representatives of the training provider community, Boards and partner agencies to provide formal and informal opportunities to improve the ETPS. The Commission oversees the operational aspects of the Texas workforce development system to ensure compliance with the WIA while providing options for the Boards and the training provider community. The Commission continues to seek options for streamlining processes, including those for the certification process and for performance reporting by eligible training providers. A key objective is to maximize participant access to education and training options, while minimizing providers' reporting burdens.

The purpose of Subchapter C is to address the ETPS as required under WIA. Changes are proposed for the purposes of streamlining the Initial Eligibility Application for non-exempt providers and to allow Boards discretion in the annual adoption of their local performance requirements for initial and subsequent eligibility determination. Section 841.39 addresses the initial eligibility application for non-exempt providers. Changes are proposed to subsection (c) to decrease the number of required application items in an effort to further streamline the application submission and review process.

Section 841.45 addresses the annual adoption of standards of performance. Changes are proposed to allow Boards discretion in the annual adoption of their local performance requirements for initial and subsequent eligibility determination.

The Commission will solicit comments via the ETPS Advisory Committee regarding modifications to the automated ETPS necessitated by any adopted amendments.

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rule will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rule;

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule;

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule;

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rule; and

There are no anticipated economic costs to persons required to comply with the rule.

Mr. Townsend, Chief Financial Officer, has determined that there is no anticipated adverse impact on small businesses as a result of enforcing or administering these rules because any regulatory burdens or impact on small businesses (including micro-businesses) as well as foreseeable adverse economic effects or costs, if any, would be a result of federal statute and regulations, which are the basis for these proposed rules. In addition, as far as can be determined, small businesses (including micro-businesses) are not required to do anything as a result of these rules that is not required to receive WIA funding for provision of training services. In the event that a Board, Board's contractor, or a subrecipient of the Agency is required to expend funds as a result of applying for the training provider certification, the expense may in part or whole be covered by the federal funds for WIA. The expenses may be more for larger entities and less for smaller entities. The expenses for any entity will be proportionate to the amount of training activities provided and for which certification is sought.

James Barnes, Director of Labor Market Information, has determined that there is no significant negative impact upon employment conditions in this state as a result of the proposed rule.

Luis Macias, Acting Director of Workforce and Development, has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to reduce the requirements upon eligible training providers for initial and subsequent certification.

Comments on the proposal may be submitted to John Moore, Texas Workforce Commission Building, 101 East 15th Street, Room 608, Austin, Texas 78778, (512) 463-3041. Comments may also be submitted via fax to (512) 463-1426 or e-mailed to: *John.Moore@twc.state.tx.us*. Comments must be received by the Agency within thirty days from the date of the publication in the *Texas Register*.

The amendments are proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules impact Texas Labor Code Chapters 301 and 302.

§841.39.Initial Certification Process for Non-Exempt Providers.

(a) - (b) (No change.)

(c) All training provider applicants under this section shall provide the following information to the LWDB:

(1) the name, mailing address and physical address of the training facility;

~~[(2) documentation of financial stability of the applicant, which may include audits or financial statements, unless the applicant is one of the following entities that are subject to regulatory or audit provisions of Texas or another state regarding financial stability: a public university, college, community or technical college;]~~

~~(2)~~ [(3)] the name of the program(s) of training services submitted for WIA funding;

~~(3)~~ [(4)] the total hours of instruction associated with each program of training services;

~~(4)~~ [(5)] the cost of each program of training services, including tuition, fees, books, and any required tools, uniforms, equipment, or supplies;

~~(5)~~ [(6)] a description of the skill set which will be acquired through each program of training services;

~~(6)~~ [(7)] a list of occupations determined by using a coding system specified by the Commission, in which these skill sets are of primary interest;

~~(7)~~ [(8)] if all of the occupations described in paragraph ~~(6)~~ [(7)] of this subsection are not on the Occupations in Demand List provided by the LWDB, evidence from employers, in a format and meeting specification set by the LWDB, that demonstrates that the occupation is in demand;

~~[(9) description of the class size, instructor/student ratio;]~~

~~(8)~~ [(10)] information on whether the students in the course are eligible for Title IV of the Higher Education Act funding (Pell grant);

~~(9)~~ [(11)] an outline of the course or program curriculum, including criteria for successful completion; and

~~[(12) the qualifications of the training instructors;]~~

~~[(13) a description of any minimum entry level requirement (e.g. reading or math level, previous education requirements such as high school diploma or GED);]~~

~~[(14) description of equipment utilized in the course and equipment/student ratio; and]~~

~~(10)~~ [(15)] any additional information that is required by the LWDB in the LWDA in which the training provider is located.

(d) - (f) (No change.)

§841.45.Standards of Performance.

(a) (No change.)

(b) Each LWDB shall adopt local performance standards after ~~[within 30 calendar days of]~~ the Commission's annual publication of state performance standards. LWDB standards shall meet or exceed the standards adopted by the Commission.

(c) (No change.)

(d) Each LWDB shall notify the Commission upon adoption of local performance standards. Until such notification occurs, the LWDB's local performance standards shall be considered by the Commission to be consistent with state performance standards for the determination of initial or subsequent eligibility.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on January 15, 2002.

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John Moore

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Texas Workforce Commission

Earliest possible date of adoption: March 3, 2002

For further information, please call: (512) 463-2573