

TEXAS WORKFORCE COMMISSION LETTER

ID/No: WD 02-03, Change 5

Date: October 25, 2005

Keyword: WIA

To: Local Workforce Development Board Executive Directors
Commission Executive Staff
Local Workforce Development Board ETP Contacts
Integrated Service Area Managers

From:  Luis M. Macias, Director, Workforce Development Division

Subject: Workforce Investment Act Eligible Training Providers: Initial Eligibility Application Process and Performance Reporting Requirements

PURPOSE:

To provide Local Workforce Development Boards (Boards) with information on the application process for the Workforce Investment Act (WIA) Eligible Training Provider (ETP) Certification System.

REFERENCES:

Workforce Investment Act; Sections 122 and 134(d)(4)
Workforce Investment Act; Final Rule, Part 663, Subpart E
Title IV of the Higher Education Act of 1965; 20 U.S.C. 1070 et seq.
National Apprenticeship Act; 50 Stat. 664, Chapter 663; 29 U.S.C. 50 et seq.
Texas Workforce Commission Workforce Investment Act Rules: 40 TAC §841.1–§841.96
WD Letter 11-00, issued March 10, 2000, and entitled “Supplemental Employment/Wage Data for Calculating Workforce Investment Act Performance”
WD Letter 13-02, issued April 12, 2002, and entitled “Eligible Training Provider System: Accessing the Statewide List of Certified Training Providers”
WD Letter 35-02, issued November 21, 2002, and entitled “Workforce Investment Act Training Provider Certification System (WIA TPCS) Performance Report and The Workforce Information System of Texas”
WD Letter 09-03, issued March 10, 2003, and entitled “Workforce Investment Act: Waiver Approval Allowing Older Youth and Out-of-School Youth to Use the Eligible Training Provider List and Individual Training Accounts”
WD Letter 33-03, Change 1, issued February 11, 2004, and entitled “The Workforce Information System of Texas: Changes to the Updated Phase 4 Procedures for Tracking Training Services”

WD Letter 26-05, Change 1, issued October 25, 2005, and entitled “Workforce Investment Act Eligible Training Providers: Program Year 2005 Performance Requirements for Initial Eligibility”

WD Letter 27-05, Change 1, issued October 25, 2005, and entitled “Workforce Investment Act Eligible Training Providers: Implementation of U.S. Department of Labor Waiver and Extensions”

FLEXIBILITY RATINGS:

No Local Flexibility (NLF): This rating indicates that Boards must comply with the federal and state laws, rules, policies, and required procedures set forth in this WD Letter and have no local flexibility in determining whether and/or how to comply. Federal and state laws, rules, policies, and required procedures with a “No Local Flexibility” rating are indicated by the acronym, **NLF**, in the margin to the right of the applicable paragraph. Additionally, all information with a “No Local Flexibility” rating is indicated by “must” or “shall.”

Failure to comply with the federal and state laws, rules, policies, and required procedures with a “No Local Flexibility” rating may result in corrective action, up to and including sanction and penalty.

Local Flexibility (LF): This rating indicates that Boards have local flexibility in determining whether and/or how to implement guidance or recommended practices set forth in this WD Letter. All guidance or recommended practices with a “Local Flexibility” rating are indicated by the acronym, **LF**, located in the margin to the right of the applicable paragraph. Additionally, guidance or recommended practices with a “Local Flexibility” rating are indicated by “may” or “recommend.”

Boards are not subject to corrective action for failure to comply with guidance or recommended practices with a “Local Flexibility” rating.

BACKGROUND:

WIA Section 122 extends automatic initial eligibility to certain training providers. The Governor is required to establish criteria for initial eligibility procedures for training providers that are not considered automatically eligible.

On July 26, 2005, the U.S. Department of Labor (DOL) granted the Texas Workforce Commission’s (Commission) request to continue the WIA waiver extending the time period of initial eligibility for training providers and includes relieving the subsequent eligibility performance reporting requirements, until June 30, 2007.

Given the detailed nature of the requirements, information in the *Procedures* section is separated into the following four topics:

- I. General Information
- II. Initial Eligibility Application Process
- III. Performance Reporting Requirements
- IV. Subsequent Eligibility Application Process

CHANGES TO WD LETTER 02-03, Change 5:

New information in this WD letter is indicated by:

- A ~~strike through~~ of the original language, which indicates that language has been deleted; and
- **Bold** typeface, which indicates new or clarifying language.

This WD Letter supersedes and rescinds the following WD Letters:

- ~~WD Letter 02-03, Change 2, issued July 1, 2004, and entitled “Workforce Investment Act Eligible Training Provider System: Initial and Subsequent Eligibility Application Process and Performance Reporting Requirements”~~
- ~~WD Letter 02-03, Change 3, issued July 7, 2004, and entitled “Workforce Investment Act Eligible Training Provider System: Initial and Subsequent Eligibility Application Process and Performance Reporting Requirements: Clarification”~~

WD Letter 02-03, Change 4, issued April 28, 2005, and entitled “Workforce Investment Act Eligible Training Providers: Initial Eligibility Application Process and Performance Reporting Requirements”

PROCEDURES:

I. GENERAL INFORMATION

- A. Scope and Coverage. Boards may use the ETP automated system (automated system) for the delivery of other training services funded through the Texas Workforce Commission (Commission), including Choices, Food Stamp Employment and Training (FSE&T), Trade Adjustment Assistance (TAA), and North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA-TAA) (see Commission rule §841.31). In addition, under a WIA waiver granted by the U.S. Department of Labor (DOL), Boards may allow Older Youth (19–21) and Out-of-School Youth to select training providers from *Texas’ Statewide List of Certified Training Providers*. (See WD Letter 09-03) LF
- B. Invitation to Apply. At least annually, Boards must publish an invitation to training providers to apply for eligibility determination. The notice must be published in a newspaper of general circulation in the local workforce development area (workforce area). [See Commission rule §841.47(a)] NLF
- C. Demand Occupations. Training services must be directly related to demand occupations in the workforce area of the eligible participant’s residence or another area to which the participant is willing to relocate. Boards must develop a process for considering participant requests for training in occupations not on the demand list if sufficient and verifiable documentation is provided. [See Commission rule §841.32(b)] NLF
- D. Application Submission and Review. Boards must ensure that application submission and Board review is completed using the automated system, which can NLF

be accessed online at ~~http://tpes.twc.state.tx.us~~ <http://etps.twc.state.tx.us>. Detailed information on use of the automated system is provided at the above Web site and in the *Local Workforce Development Board Users Guide*, which is posted on the Commission's Intranet.

- E. Training Provider Assurance Statement. To be considered for inclusion on *Texas' Statewide List of Certified Training Providers*, all training providers must submit a Provider Assurance Statement (PAS) form for Commission review and approval. Boards must provide information to training providers on the PAS submission requirement. The PAS form, which can be accessed through the automated system, applies to all applications that are submitted to one or more Boards. NLF

Boards may require additional assurances as part of their local application requirements. LF

The PAS form must be completed on the automated system, with a printed and signed (in an ink color other than black) copy forwarded to: NLF

WIA ETP Unit
Texas Workforce Commission
101 E. 15th Street, Room 112-T
Austin, TX 78778-0001

~~To ascertain if this requirement has been fulfilled, access~~ **Access** the *PAS Directory* in the public section of the automated system **to view TWC-approved PAS forms.**

- F. Unemployment Insurance (UI) Wage Match Service. To assist training providers in documenting program performance, the Commission offers a UI Wage Match Service. Boards must provide information to training providers on the availability of this service. Additional information on the UI Wage Match Service is posted in the *Certification Process* section (public view) of the automated system. NLF

- G. Local Appeals Process. Boards must develop a written appeals process to be used when providers wish to appeal a determination that they are ineligible to receive WIA funding for training services. (See Commission rule §841.48) NLF

1. The process must include an opportunity for a hearing.
2. Final written decisions on appeals must be provided within 60 days of the Board's receipt of the appeal request.

In addition, Boards must develop a policy addressing the circumstances under which denied applications may be reconsidered. [See Commission rules §841.41(b) and §841.44(e)]

II. INITIAL ELIGIBILITY APPLICATION PROCESS

A. Boards must provide information to training providers on initial exemption status and application procedures as follows:

NLF

1. Initial Exemption. WIA Section 122 extends automatic initial eligibility to certain training providers' programs. Initial exemption status is granted for Initial Eligibility Applications certified on behalf of a Board for a training provider's program offered at a specific training location.
2. Training Provider Types. Training providers are classified into three categories:
 - a. Exempt Training Providers: WIA extends automatic initial eligibility to certain training providers. Exempt training providers are still required to apply to the Board in order to be included on *Texas' Statewide List of Certified Training Providers*. However, they are not required to submit performance information for initial eligibility determination. Exempt training providers are those that meet one of the following criteria:
 - (1) A postsecondary educational institution that is eligible to receive federal funds under Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.) *and* that provides a program that leads to an associate's degree, baccalaureate degree, or certificate. For the purposes of initial eligibility determination, "certificate" is defined as "a document or other proof provided by an educational institution or other training provider awarded after successful completion of a course, sequence of courses, or program that is a minimum of 144 non-credit clock/contact hours or 9 credit hours in length" [see Commission rule §841.2(2)]. This definition applies only if the institution is currently eligible (i.e., at time of application submission) to receive federal funds under Title IV of the Higher Education Act of 1965.
 - (2) An entity that carries out programs under the Act of August 16, 1937 (commonly known as the National Apprenticeship Act; 50 Stat. 664, Chapter 663; 29 U.S.C. 50 et seq.).

When verifying a training provider's initial exemption status, Boards must verify that postsecondary educational institutions are eligible to receive any or all funds under Title IV of the Higher Education Act.

- b. Nonexempt Training Providers: Under WIA, nonexempt training providers are required to apply to the Board for eligibility determination. Performance data must be submitted if the applicant has offered the training program on or before the date of application submission. Nonexempt training providers include:

- (1) postsecondary educational institutions that provide training programs that do *not* lead to an associate's degree, baccalaureate degree, or certificate;
 - (2) entities that provide apprenticeship programs that are *not* registered by DOL's Bureau of Apprenticeship and Training under the National Apprenticeship Act; and
 - (3) all other public or private providers of training programs.
- c. Excluded Training Providers: Training providers of on-the-job training, customized training, or youth activities authorized under WIA are not subject to the ETP policy or application process.
3. Initial Eligibility Application and Instructions. The Governor is required to establish criteria for initial eligibility application procedures for nonexempt training providers. Training providers are required to apply for initial eligibility determination to the Board(s) for the workforce area(s) of the state in which they wish to offer training services. Detailed instructions are posted in the *Certification Process* section (public view) of the automated system. In addition, the instructions can be accessed from all main application sections in the Board's secured access view of the automated system.
- a. Exempt Training Providers: Exempt training providers are required to complete required items in five sections of the automated application [i.e., (1) Exemption Status Questionnaire, (2) Provider, (3) Program, (4) Board Selection, and (5) Board Requirements].
 - b. Nonexempt Training Providers: Nonexempt training providers are required to complete required items in all sections of the application.

B. Board Options.

1. Selection of Board Requirements. Boards may select additional local requirements for inclusion in the Initial Eligibility Application through the automated system. It is recommended that Boards include a selection to comply with Commission ~~rule~~ **rules** §841.39(c)(7) (~~i.e., documentation justifying training for an occupation not on the Board's list of demand occupations~~) and §841.44(b). LF

In developing programs for training services and establishing performance criteria for successful course completion, Boards must ensure that training providers use, in descending order: NLF

- (1) **skill standards recognized or conditionally recognized by the Texas Skills Standards Board**
- (2) **industry-endorsed skill standards**
- (3) **skill requirements determined by employers**

~~It is also recommended that Boards select the item approved by the Board Requirements Workgroup. This item is preceded by an asterisk and is the *second item* in the *Justify Occupation Not on Demand List* section of the Board Requirements listing.~~

It is recommended that Boards select the item approved by the Board Requirements Workgroup, as denoted by an asterisk. LF

2. Training Location. The intent of WIA is that applications be submitted to the Board(s) for the workforce area(s) in which the training provider wishes to offer training services. Regardless of exemption status, a separate application is to be submitted for each unique combination of (1) workforce area, (2) training program/course, and (3) training location (i.e., physical address). However, on a case-by-case basis, the Board may grant a variance to the requirement of submission by training location. LF

The Board must document the local, specific circumstances that determined the need for such a variance. When granting a variance, the Board must: NLF

- a. provide equal consideration to all training provider types;
- b. consider the importance of being able to evaluate program-specific performance and cost data that may vary by training location; and
- c. ensure that detailed program information will be available to facilitate informed consumer choice.

3. On-Site Visits. As determined reasonable by the Board, Boards may conduct on-site visits to training provider sites for the purpose of confirming information submitted as part of a nonexempt Initial Eligibility Application. [See Commission rule §841.39(f)] LF

4. ~~Application Requirements. The intent of WIA is that a training provider's program (i.e., a unique combination of workforce area, program/course, and training location) retains the status of "certified" without a lapse, proceeding from initial certification to annual, subsequent recertification based on the submission of required performance information. For reasons of process or cause, lapses in certification may occur. The Board must work directly with training providers to facilitate the timely submission of complete, acceptable applications.~~ NLF

~~Under certain circumstances, a training provider may submit an Initial Eligibility Application for a previously certified program if, for example, the program prepares participants for occupation(s) that have been added or reinstated to the Board's list of demand occupations or the training provider fails to meet the deadline for submission of the Subsequent Eligibility~~ LF

Application. If the program meets the criteria for initial eligibility exemption as outlined above, the Board may require submission of a more complete Initial Eligibility Application, including one or more of the following:

- a. Specified fields in the *Program* section
- b. Complete Performance section:
 - (1) New Program Offering (default selection is “No”)
 - (2) Methodology(ies)
 - (3) Reporting Period: Begin Date
 - (4) Reporting Period: End Date
 - (5) Participant Universe
 - (6) Texas Higher Education Coordinating Board (THECB) Status (default selection is “No”)
 - (7) Program Completion Rate (NOTE: For programs currently approved by THECB, either Program Complete Rate and/or Number of Graduates and Number of Leavers may be provided.)
 - (8) Entered Employment Rate
 - (9) Average Hourly Wage at Placement or Average Quarterly Wage (NOTE: If quarterly wage data was obtained by using the Commission’s UI Wage Match Service, the UI Wage Match Reference Number is required.)

The Board must review the application for completeness and accuracy. The Commission will review performance information against the Board-adopted initial eligibility performance minimums currently on file. Performance information will be posted only if complete, acceptable information is submitted.

NLF

C. Board Responsibilities. Boards must:

NLF

1. accept completed training provider applications from exempt and nonexempt training providers. Application review and action must be completed on the automated system;
2. provide information to potential applicants, including:
 - a. application submission procedures and timelines;
 - b. Board contact for the training provider application process;
 - c. current and projected occupational demand in the workforce area; and
 - d. Board-adopted performance requirements for the appropriate program year;
3. provide technical assistance to training providers regarding certification requirements and procedures;

4. verify that all application information is complete, accurate, and in compliance with the requirements outlined in Commission rule and in this WD Letter, including:
 - a. the training provider is in compliance with applicable state law, including Texas Education Code, Chapter 132, related to Career Schools and Colleges [see Commission rule §841.40(c)];
 - b. the program/course is consistent with one or more demand occupations in the workforce area;
 - c. the training provider's program exemption status;
 - d. if required, performance information is complete, accurate, and meets the minimum standards established by the Commission or adopted by the Board, as applicable; and
 - e. pertinent documentation has been received by the Board;
5. submit Board-approved applications to the Commission on a timely basis;
6. retain required documentation at the Board office, including:
 - a. the Commission's UI wage match documentation, if applicable; and
 - b. other supporting documentation required of or by the Board; and
7. ensure access to and appropriate use of *Texas' Statewide List of Certified Training Providers*.

III. PERFORMANCE REPORTING REQUIREMENTS

Each year, the state is required to establish minimum performance measures. See ~~WD Letter 24-04, Change 1~~ and WD Letter 26-05, **Change 1** for Program Year **2005 (PY'04)** and **PY'05** performance measures, ~~respectively~~.

Under WIA Section 122(d), training providers are required to submit verifiable, program-specific performance information. Reporting requirements are outlined below for all individuals participating in the applicable program (hereafter ALL).

According to Commission rule §841.2(6), "completion" is defined as "finishing a program or course of study and receiving a formal credential (if offered for the given program/course) as currently recognized by the Commission, a designated partner agency, or State regulatory board." (NOTE: Includes credentials recognized by an employer or industry, as well as industry-endorsed skill standards.)

A. ALL Reporting. Boards must ensure that ALL data reported by training providers is based on the following: NLF

1. Reporting Period—Based on the applicant’s standard reporting cycle, the *most recent complete* 12-month period prior to the date of application submission. Standard reporting cycles include:

- a. academic year or other reporting cycle as defined by THECB, the Commission’s Career Schools and Colleges Program, or other appropriate regulatory entity; **and**
- ~~b. calendar year, fiscal year, or contract year reporting cycle. ÷ and~~
- ~~c. the 12-month WIA certification period for the given program/course.~~

Exceptions include:

- a. for training providers using the UI Wage Match Service offered by the Commission, the 12-month reporting Period will be specified by the Commission;
- b. Career Schools and Colleges’ special reporting period for school year 2003–2004 (July 1, 2003, through August 31, 2004); and
- c. new program offerings—Initial Eligibility Application.
 - (1) If the program has *never been delivered* to any student, regardless of funding source, prior to the date of application submission, performance reporting is not required.
 - (2) For programs that have been *in operation for less than 12 months* at time of application submission, data must be submitted for the partial reporting period as appropriate.

2. Participant Universe—Total number of participants actively participating during the specified 12-month reporting period who were scheduled to complete the program/course during that same 12-month reporting period, regardless of initial enrollment date.

Exceptions—The following exceptions apply to institutions that are currently (i.e., as of the date of application submission) eligible to receive Title IV funds and that are regulated by THECB or the Commission’s Career Schools and Colleges Program.

a. THECB-regulated:

- (1) Graduate/Leaver universe for the standard 12-month reporting period as defined by and for THECB's reporting process for community/technical colleges or public universities, as applicable
- (2) Submission of data obtained from the Automated Student and Adult Learner Follow-Up System (ASALFS) operated by the Commission's Labor Market and Career Information (LMCI) Department

b. Licensed Career Schools:

- (1) Graduate/Leaver universe for the standard 12-month reporting period as defined by and for the training program's reporting process. Career Schools and Colleges' special 14-month reporting period for school year 2003–2004 (July 1, 2003, through August 31, 2004) is the exception.
- (2) Submission of data collected and reported per the training program's established reporting requirements.

Supplemental Reporting—If utilizing one of the exceptions outlined above, performance data must be submitted for the Graduate/Leaver universe as defined by the applicable regulatory entity. However, providers have the option of submitting supplemental data. Additional information on supplemental reporting options is posted in the *Certification Process* section (public view) of the automated system.

3. Alternative Data:

- a. For programs that are currently THECB-approved, the Commission will accept the Number of Graduates *and* the Number of Leavers as a proxy for the Program Completion Rate – ALL.
- b. If data is not available for a specific certificate or degree program specialty area, the Commission will accept data for the area of study (i.e., Classification of Instruction Program (CIP) code grouping). If applicable, this must be noted in the *Methodology(ies)* field of the *Performance* section.

4. Data Validation and Submission of Seed Records—Boards must provide information to training providers on data validation requirements. The Commission will validate ALL data reporting for a randomly selected sample of certified training provider programs. Seed record documentation (i.e., specific identifying information for members of the Participant Universe – ALL) is not required at time of application submission. However, training providers selected for inclusion in the validation sample will be required to submit seed records per Commission protocol. (*Exceptions*: Seed record documentation is required unless the performance data submitted was obtained from the UI Wage Match Service or ASALFS. For additional information on

NLF

LMCI's system, contact Ruben Garcia at (512) 491-4965 or ruben.garcia@cdr.state.tx.us.)

C. Board Reporting Responsibilities.

1. ALL Reporting—Boards must identify their local protocol for data submission (i.e., training provider's documentation and submission of required ALL program-specific performance data). NLF

Boards must be aware that the following local procedures are *not* applicable because of the DOL waiver:

- Procedures for making the *WIA TPCS Performance Report* in The Workforce Information System of Texas (TWIST) available
- Procedures for submitting data to be used in the local adjustment process

2. WIA Reporting—Boards must be aware that this information is not applicable because of the DOL waiver.

IV. SUBSEQUENT ELIGIBILITY APPLICATION PROCESS

- A. DOL Waiver Extension. Boards must be aware that a waiver extending the period of initial eligibility for currently certified training programs has been granted by DOL (see WD Letter 27-05, **Change 1**). ~~Because of the waiver extension,~~ **As a result, the initial application period is extended and subsequent eligibility performance reporting requirements are waived pending WIA reauthorization through June 30, 2007, or pending WIA reauthorization.** NLF

All training providers with currently certified programs must update program information through a "change request" by selecting the *Update/Complete* tab located in the *Application* section of the ETP automated system (automated system). NLF

The reporting waiver is applicable for Participant Universe – ALL *and* Participant Universe – WIA.

Boards must not require performance data, except as applicable for Initial Eligibility Applications. NLF

Please note that portions of the automated system are being utilized only to update information for posting to *Texas' Statewide List of Certified Training Providers*.

ACTIONS REQUIRED:

Boards must ensure that appropriate staff is apprised of and complies with the requirements in this WD Letter.

INQUIRIES:

Direct inquiries to the Commission's ETP Help Desk at:

- ~~tps.helpdesk@twc.state.tx.us~~ **etp.helpdesk@twc.state.tx.us**
- (866) 256-6333 [Toll-free]
- (512) 936-0669 [Local/Austin]

Rescissions: WD Letter 02-03, Changes 2, 3 and Change 4	Expiration: Continuing
---	------------------------