

1 **Policy Concept**
2 **Chapter 840, WIOA Eligible Training Providers**
3 **Rule Project #2021-04-840 – ETP Rule Updates**
4

5 **Introduction and Background**

6 On December 15, 2020, the Texas Workforce Commission (TWC) adopted new Chapter 840, WIOA
7 Eligible Training Providers, to address the requirements of training services provided through the
8 Workforce Innovation and Opportunity Act (WIOA). The chapter became effective on January 4, 2021.
9

10 Staff identified several areas in which amendments to Chapter 840 will clarify requirements for
11 participants, Local Workforce Development Boards (Boards), and eligible training providers (ETPs)
12 engaged with TWC's statewide Eligible Training Provider List (ETPL) specifically, and the ETP system
13 in general.
14

15 Chapter 840 describes rules for the provision of training services funded through TWC as required by
16 WIOA §§116, 122, and 134; 20 Code of Federal Regulations (CFR) Part 680, Subparts B - D; and 20
17 CFR §681.550.
18

19 Communication with Boards and ETPs indicates to staff that enhancements to Chapter 840 relating to
20 the local administration of training services provided through the ETPL will be beneficial to the
21 effective administration of the ETP system and statewide ETPL.
22

23 **Purpose for the Proposed Rule**

24 The purpose for this proposed rule is to amend Chapter 840 by:

- 25 • amending Subchapter F, §840.53, WIOA Violations, to include compliance with additional and
26 necessary requirements, including acknowledgement of TWC's authority under the Family
27 Educational Rights and Privacy Act (FERPA), and immediate removal of programs provided by
28 unlicensed schools; and
- 29 • amending Subchapter G, §840.61, Individual Training Accounts, to clarify that ETPs may not
30 impose additional costs on such students funded through Individual Training Accounts (ITAs)
31 without prior consent of the Board, and that Boards must ensure that ETPs and participants are
32 informed that training funds are not available unless and until the Board has approved and issued the
33 ITA.
34

35 **Rule Revisions Required by Federal Regulation or State Statute**

36 None.
37

38 **Other Rule Revisions**

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40 **Issue #1: Removal of Unlicensed Provider Programs**

41 While TWC must review an ETP program for eligibility using information submitted during annual
42 reporting, because an unlicensed provider is not eligible to provide training instruction to students in
43 Texas, staff recommends immediate removal from the ETPL of previously approved programs that lose
44 licensure.
45

46 **Issue #2: FERPA Acknowledgement**

1 Title 20, CFR §677.230 details the minimum requirements of the ETP annual reports, which include
2 outcomes achieved for primary performance indicators of all individuals engaged in ETP programs.
3 ETPs are required to submit student information, including Social Security numbers, to TWC. This
4 information allows TWC to calculate most of the performance outcomes on behalf of the ETPs,
5 significantly reducing their reporting burden. FERPA protects the privacy of student education records
6 and affords parents and eligible students certain rights with respect to this personally identifiable
7 information (PII). In general, a parent or eligible student must provide consent before an educational
8 agency or institution eligible for Federal Student Aid discloses PII, unless an exception applies. Joint
9 guidance, issued by the US Department of Labor and the US Department of Education in August 2016,
10 detailed how FERPA's audit or evaluation exception permits disclosure of PII from education records
11 for WIOA performance accountability purposes. Because TWC uses this data only for required federal
12 reporting under WIOA for the purpose of data collection and disaggregated reporting of ETP
13 performance, these student data are an allowable exception. ETPs are already required to acknowledge
14 TWC's FERPA authority when submitting annual reports. For clarity, staff recommends the inclusion of
15 this language in §840.53.

17 **Issue #3: Additional ITA Costs**

18 WIOA §122 requires TWC to collect required information and additional criteria from training
19 providers for determination of initial and continued eligibility and inclusion on the statewide ETPL.
20 Training and Employment Guidance Letter (TEGL) 13-18, issued August 31, 2018, titled "Eligible
21 Training Provider (ETP) Reporting Guidance under the Workforce Innovation and Opportunity Act
22 (WIOA)," requires that ETP data include program costs. To clarify that any changes to ETP program
23 costs must be included on the ETPL prior to issuance of the ITA, staff recommends that such language
24 explicitly be included in §840.61.

26 **Issue #4: Availability of Funds**

27 Title 20, CFR Part 680, Subpart C describes the provision of ITAs on behalf of WIOA Adult and
28 Dislocated Worker participants in need of training in order to fund ETP training programs. Title 20,
29 CFR §680.340 identifies that ITAs will be established by Board staff for eligible individuals referred to
30 ETPs by Board staff. Occasionally, Board staff may determine eligibility for individuals referred by
31 training providers to local Workforce Solutions Offices. Staff recommends amending §804.61 to ensure
32 that participants and ETPs understand that funds are provided for training services only through ITAs
33 issued by Boards or their local agents.

35 **PC Decision Point**

36 Staff seeks direction on amending Chapter 840:

- 37 • to include FERPA authority acknowledgement and remove unlicensed programs per compliance
- 38 agreement requirements; and
- 39 • to clarify that:
 - 40 ➤ ETPs may not impose additional costs on such students funded through ITAs without prior
 - 41 consent of the Board; and
 - 42 ➤ Boards must ensure that ETPs and participants are informed that training funds are not available
 - 43 unless and until the ITA is approved and issued by the Board or its local agent.