

TEXAS WORKFORCE COMMISSION LETTER

ID/No:	WD 02-16, Change 2
Date:	June 29, 2016
Keyword:	WIOA
Effective:	Immediately

To: Local Workforce Development Board Executive Directors
Commission Executive Offices
Integrated Service Area Managers

Reagan Miller

From: Reagan Miller, Director, Workforce Development Division

Subject: **Workforce Innovation and Opportunity Act Eligible Training
Providers Evaluation Criteria and Performance Expectations—
Update**

PURPOSE:

To provide Local Workforce Development Boards (Boards) with information and guidance on Workforce Innovation and Opportunity Act (WIOA) Eligible Training Providers (ETPs), including:

- evaluation criteria; and
- performance measures and expectations.

This updated WD Letter provides information regarding an extension for grandfathered ETPs until after the publication of final WIOA regulations.

- ~~Registered Apprenticeship programs; and~~
- ~~revised performance expectations approved by the Texas Workforce Commission's (TWC) three-member Commission (Commission) on May 3, 2016.~~

CHANGES TO WD LETTER 02-16, CHANGE 1:

New information in this WD Letter is indicated by:

- a ~~strikethrough~~ of the original language, which indicates that language has been deleted; and
- **bold** typeface, which indicates new or clarifying language.

BACKGROUND:

WIOA maintains the requirement set forth in the Workforce Investment Act (WIA) that the Texas Workforce Commission (TWC), in consultation with the Texas Workforce Investment Council, must establish criteria, information requirements, and procedures regarding the eligibility of training providers to receive funds.

WIOA allows for existing ETPs, approved using criteria set forth in WIA, to be grandfathered in through December 31, 2015. Training and Employment Guidance Letter No. 41-14, Change 1, issued November 24, 2015, provides grandfathered ETPs with an extension to June 30, 2016. ~~This one-time extension will provide TWC, Boards, and ETPs additional time to establish and implement continued eligibility application procedures, and reduce potential disruption to participants due to changes in the state list of ETPs and programs in the midst of an academic year. After June 30, 2016, providers grandfathered in will require a new initial evaluation under WIOA, and New Providers seeking new ETP approval on or after July 22, 2015, will be evaluated based on the requirements set forth in WIOA, with the exception of Registered Apprenticeship programs.~~

A Board workgroup reviewed and provided input on the criteria for initial eligibility of new training providers and programs. The workgroup continues discussion on criteria for initial and subsequent certification, as well as on ETP reporting requirements.

At the August 11, 2015, Commission meeting, the three-member Commission (Commission) approved staff recommendations to:

- retain existing performance expectations for ETPs;
- add new criteria regarding partnerships with employers and the alignment with in-demand occupations; and
- authorize Boards to adopt higher performance standards, monitor provider outcomes, and withdraw approval as necessary.

At the May 3, 2016, Commission meeting, the Commission approved staff recommendations to:

- **define “entered employment” as “in unsubsidized employment during the second quarter after exit” to align with WIOA;**
- **temporarily remove the performance expectation regarding the average wage at placement with the understanding that staff will work to develop a mechanism to evaluate earnings outcomes in the future; and**
- **retain the following performance minimums:**
 - **at least 60 percent of all program participants complete; and**
 - **at least 60 percent of all program participants entered employment (in unsubsidized employment during the second quarter after exit).**

At the June 7, 2016, Commission meeting, the Commission approved the staff recommendation to extend the certification of grandfathered ETPs until after the issuance of final WIOA regulations and programmatic guidance.

PROCEDURES:

NLF: Boards must be aware of the following:

- Providers and programs that were eligible under WIA remain eligible under WIOA until ~~June 30, 2016~~ **otherwise notified**.
- ~~As of June 30, 2016, all providers, including Existing ETPs grandfathered in under WIA requirements must be recertified using the WIOA criteria, first at initial application, then one year after initial application, and every two years following.~~ **This recertification process will occur after the issuance of final WIOA regulations and programmatic guidance, and after TWC has adopted new criteria and performance standards for initial and continued eligibility of ETPs.**

NLF: Boards must be aware of the following guidelines for reviewing and approving ETP applications submitted ~~between~~ **after July 22, 2015, and June 30, 2016:**

- ~~The WIOA grandfather provision applies at the provider level. Therefore, Grandfathered providers that had at least one program certified under WIA and that are seeking approval for additional training programs must provide documentation of employer partnerships, but do not need to provide and performance data.~~
- **Providers with grandfathered programs that are seeking approval for additional training programs, and** new providers that did not have any programs certified under WIA, must be evaluated based on the requirements set forth in WIOA, as follows:
 - New program offerings must provide documentation of employer partnerships, but are not required to provide performance data; and
 - Existing programs must provide performance data and documentation of employer partnerships.
- All **providers with grandfathered programs** ~~providers~~ recertified under the requirements set forth in WIOA will be recertified for a one-year period.

NLF: Boards must be aware that Registered Apprenticeship programs are not subject to the same application and performance information requirements or to a period of initial eligibility or initial eligibility procedures as other providers because they go through a detailed application and vetting process to become a Registered Apprenticeship program sponsor with the U.S. Department of Labor (DOL).

Criteria to Become an ETP under WIOA

NLF: Boards must be aware that a provider is required to be:

- an institution of higher education providing a program that leads to a recognized postsecondary credential;
- an entity that provides registered apprenticeship training; or
- a public or private training provider, which can include:
 - joint labor-management organizations; and
 - adult education and literacy providers—if services are provided with occupational skills training.

NLF: Boards must be aware that WIOA requires that the following factors be taken into consideration by states when establishing eligibility criteria:

- Performance, including:
 - consideration of the characteristics of the population served;
 - relevant economic conditions; and
 - employment and earning outcomes for students in general;
- Access throughout the state, including rural areas, and through the use of technology;
- Information reported to the state involving training services, other than those provided under WIOA;
- The degree to which training programs relate to in-demand industry sectors and occupations in the state;
- Requirements for state licensing of training providers and licensing status;
- Ability to issue industry-recognized certifications;
- Ability to issue recognized postsecondary credentials;
- Quality of the training program;
- Ability to train employed individuals and individuals with barriers to employment;
- Other factors as needed to ensure that:
 - training providers are accountable;
 - training providers meet the needs of local employers and participants;
 - participants can make an informed choice; and
 - the collection of information to demonstrate compliance is not overly burdensome, particularly for Registered Apprenticeship programs. There are no performance expectations for Registered Apprenticeship sponsors and training providers specifically to encourage their participation in order to facilitate engagement with the Texas workforce system.

NLF: Boards must be aware that, at a minimum, initial eligibility criteria must include factors related to the following:

- Performance expectations;
- Partnerships with employers;
- The provision of high-quality training services, including the ability of the provider to operate programs leading to a recognized postsecondary credential; and
- The alignment of training services with in-demand industry sectors and occupations, to the extent practicable. Registered Apprenticeship programs are exempt from this requirement.

NLF: Boards must be aware that, notwithstanding Registered Apprenticeship programs, WIOA requires ETPs to meet more robust reporting requirements, including the following:

- Appropriate, accurate, and timely submission to the state;
- Performance accountability as related to the primary indicators of performance;
- Recognized postsecondary credentials received;
- Cost of attendance, to include tuition, books, and fees;

- Program completion rate; and
- Provision of information related to governor-established criteria.

LF: Boards may establish additional criteria and require higher levels of performance of all training providers other than Registered Apprenticeship programs. Registered Apprenticeship programs are not subject to state or local criteria. The only ETP criterion that applies to apprenticeships is that they be registered as apprenticeship programs with DOL. Registered **and approved** Apprenticeship programs are to receive automatic approval to be included on the ETP list.

NLF: Boards must ensure that a list of ETPs, with criteria and information requirements disaggregated to the local level, is made available to participants so that they can make informed choices.

ETP Performance Measures and Expectations

Current ETP criteria are set forth in TWC’s Chapter 841 Workforce Investment Act rules regarding ETPs:

- Section 841.45—criteria regarding performance expectations; and
- Section 841.38 and §841.39—criteria regarding the ability of the provider to operate programs leading to a recognized postsecondary credential.

On August 11, 2015, the Commission approved the following criteria pertaining to partnerships with employers and alignment of training services with in-demand industry sectors and occupations. ETP evaluation criteria for initial certification will need to include documentation of partnerships with employers related to the particular training program by submission of:

- a letter of support from a local employer or employers;
- evidence of the existence of an employer-based advisory committee; or
- other means acceptable to the Board as set forth in policy adopted in a public meeting.

Note: Registered Apprenticeship programs are exempt from this requirement because, by definition, these programs are employer-driven and involve at least one employer.

The Commission shall:

- revisit the ETP evaluation criteria for initial certification later in calendar year 2016 to determine if any modifications are needed; and
- consider ETP evaluation criteria for subsequent certification.

As directed by §841.45(a), the Commission must annually adopt performance standards for individuals enrolled in the program of training services, as applicable. Current ETP performance expectations approved by the Commission on August 11, 2015, and renewed with minor changes on May 3, 2016, are as follows:

- At least 60 percent of all program participants complete; and

- At least 60 percent of all program participants entered employment (in unsubsidized employment during the second quarter after exit).

The ETP performance measures serve as minimum indicators of training program quality.

NLF: Boards must be aware that all ETPs **being certified through initial eligibility** must meet the established performance minimums to be certified, but ETPs that are regulated by the Texas Higher Education Coordinating Board will not be required to submit performance information in program applications. TWC staff will acquire the necessary performance information for these ETPs and provide it to Boards. All other ETPs must provide the necessary performance information. New program offerings¹ and Registered Apprenticeship programs are the only exception to this requirement.

NLF: As under WIA, under WIOA Boards must:

- adopt performance requirements that meet or exceed the performance minimums for initial eligibility as appropriate for their local workforce development areas;
- monitor provider performance;
- adjust performance measures where appropriate to local conditions and needs, incorporate additional related performance requirements and verifiable performance information, and use related measures for which data are readily available;
- withdraw Board approval for a program for failure to meet the Board's performance criteria;
- verify performance information submitted in ETP applications;
- investigate and report to TWC any possible violations of WIOA requirements or state or local laws, and withdraw approval for a provider or take other appropriate action for findings of intentional submission of inaccurate information or other WIOA violations; and
- require a provider to resubmit an application in cases of change in regulatory or accreditation status or violations of state or local laws.

LF: Boards may review and develop recommendations for the criteria and processes of subsequent certification of ETPs in concert with DOL reporting and rule guidance and with any additional modifications to the initial certification process.

INQUIRIES:

Direct inquiries regarding this WD Letter to wfpolicy.clarifications@twc.state.tx.us.

¹ New program offerings—Programs that are new at the time of application submission (i.e., a program/course never delivered to any student, regardless of funding source, on or before the date of initial eligibility application submission). No performance reporting is required for new program offerings.

ATTACHMENT:

1. Texas’ Workforce Innovation and Opportunity Act Eligible Training Provider Certification System—Notification of Board Performance Requirements

RESCISSIONS:

WD Letter 02-16, Change 1

REFERENCES:

- Workforce Innovation and Opportunity Act of 2014, §122 Identification of eligible providers of training services
- U.S. Department of Labor Employment and Training Administration, Training and Employment Guidance Letter No. 41-14, Change 1, issued November 24, 2015, and entitled “Workforce Innovation and Opportunity Act (WIOA or Opportunity Act) Title I Training Provider Eligibility Transition”
- Texas Workforce Commission Integrity of the Texas Workforce System Rules: 40 TAC, Chapter 802
- Texas Workforce Commission Workforce Investment Act Rules: 40 TAC, Chapter 841
- WD Letter 10-07, issued February 2, 2007, and entitled “Adoption of Local Workforce Development Board Policies in Open Meetings”

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. All information with an NLF rating is indicated by “must” or “shall.”

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 information with an LF rating is indicated by “may” or “recommend.”