

**Sections 841.1, 841.2, 841.11-841.13, 841.31-841.42, 841.45, 841.47-841.49, 841.61-841.69 and 841.91-841.96 Workforce Investment Act**

The Texas Workforce Commission (Commission) adopts new §§841.1, 841.2, 841.11-841.13, 841.31-841.42, 841.45, 841.47-841.49, 841.61-841.69, and 841.91-841.96, relating to the implementation of the Workforce Investment Act. Sections 841.2, 841.12, 841.13, 841.35, 841.39, 841.42, 841.45, 841.47, 841.48, and 841.66 are adopted with changes to the proposed text as published in the April 16, 1999, issue of the Texas Register (24 Tex Reg 3054). Sections 841.1, 841.11, 841.31, 841.32, 841.33, 841.34, 841.36-841.38, 841.40, 841.41, 841.49, 841.61-841.65, 841.67-841.69 and 841.91-841.96 are adopted without changes and will not be republished.

The Commission withdraws and re-proposes §§841.43, 841.44, and 841.46 for an additional 30-day comment period.

The 74th Texas Legislature and the Governor enacted Texas' landmark legislation, House Bill 1863 (H.B. 1863), in 1995. This state law reformed both the welfare and workforce systems and made Texas one of the nation's leaders among reform-minded states. House Bill 1863 provided local elected officials the opportunity to form local workforce development boards (LWDB or the Board) that enjoy the flexibility and authority to design and oversee the delivery of workforce development services that meet the needs of local employers and workers.

The federal Workforce Investment Act of 1998 (WIA) recognizes the strides made in the development of Texas' workforce investment system and specifically provides for the state to maintain many features of H.B. 1863. Without these provisions, early implementation of WIA in Texas would be substantially more complicated. Key features of the system that Texas is preserving include the following.

The State Human Resource Investment Council, called the Texas Council on Workforce and Economic Competitiveness (TCWEC) constituted under prior consistent state law, will function as the State Board.

The twenty-eight existing local workforce development areas (LWDAs), established under prior consistent state law, will function as the local workforce investment areas for purposes of WIA.

The State will continue to use the Allocation Rule established under prior consistent state law for the disbursement of WIA funds.

The State will continue to use the sanctions, established under prior consistent state law, for nonperformance by an LWDB.

LWDBs established in conformity with prior consistent state law will perform the functions of the local workforce investment boards, including those functions required of a Youth Council.

In lieu of designating or certifying one-stop partners and operators as described in WIA, Texas requires LWDBs to partner with entities listed in prior consistent state law and to competitively procure the Center Operator(s).

The LWDBs will also continue to make arrangements for financial services by selecting fiscal agents in accordance with the process established in prior consistent state law set out in the Texas Government Code.

Texas bases its strategies for implementing WIA requirements for the Texas workforce development system on four key principles determined by the Governor: (1) limited and efficient state government; (2) local control; (3) personal responsibility; and (4) support for strong families. The training provider certification system is guided by these four key principles which serve as a framework to guide the development of this system in order to allow maximum flexibility, emphasize customer choice, and demand strict accountability.

Within each LWDA, the LWDB and the Commission must find a provider of training services to be eligible and qualified to provide a training program before WIA funds may be used to pay for services provided by that training program. All providers must submit written applications in order for eligibility to be determined.

As described in §841.38, the LWDBs will develop an application to be used in two situations. The first situation is that of institutions which are eligible to receive federal funds under Title IV of the Higher Education Act of 1965 and which provide a program that leads to an associate degree, baccalaureate degree, or certificate, when those institutions are seeking to be certified as an eligible provider for a program leading to an associate degree, baccalaureate degree, or certification. The second situation occurs when an entity that carries out programs under the National Apprenticeship Act is seeking certification as an eligible provider for a program under the National Apprenticeship Act.

A second application process, described in §841.39, is used in three situations. The first is when a postsecondary school is seeking certification as an eligible provider for a program which does not lead to an associate degree, baccalaureate degree, or certification. The second is when an entity that carries out programs under the National Apprenticeship Act is seeking certification as an eligible provider of a program which is not regulated under the National Apprenticeship Act. The third is when any other public or private provider of training services, including community-

based and faith-based organizations, seeks to be certified as an eligible provider of training services.

The Commission solicited and received comments and input into the development of the provider certification procedures through meetings with representatives of community colleges, proprietary schools, literacy training providers, apprenticeship programs and LWDBs; the creation and continuous revision of a website on the Internet; and a public hearing on the WIA state plan held on March 11, 1999.

The Commission also held a public hearing to receive oral testimony on these rules on May 13, 1999, in Room 244 of the TWC Building at 101 East 15th Street, Austin, Texas. The following appeared to provide their comments on the proposed rules: Dallas County Community College District, Tarrant County Junior College, and Houston Works.

Written comments expressing concern and suggestions regarding some sections of the rules were received from the Texoma Workforce Development Board, West Central Texas Local Workforce Development Board, Tarrant County Junior College, Texas Council on Workforce and Economic Competitiveness, and the Texas Skill Standards Board. Following each comment is the Commission's response.

Comments regarding §841.2, Definitions, are as follows:

Comment: Two commenters request that a definition for "certificate" be added that would allow those postsecondary educational institutions [eligible to receive federal funds under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.)] offering courses that do not lead to an associate degree, baccalaureate degree or certificate (or 360 contact hour continuing education programs) to be exempt from the application requirements in §841.39. The commenters recommend that the definition read: "Certificate: A course or sequence of courses which provide a set of skills necessary for employment."

Response: The Commission agrees with the need for a definition, but not with the definition suggested. While the US Department of Labor (DOL) has not issued a definition for "certificate," it is clear that a primary goal of WIA is informed consumer choice. The Commission will consider the term and amend the rule to add a definition at a later time.

Comment: A commenter suggests the addition of definitions for the following: (1) certification process, (2) certified providers, (3) performance standards, (4) appeals, (5) "Council" for Texas Council on Workforce and Economic Competitiveness, (6) grievance, and (7) "TSSB" for Texas Skill Standards Board.

Response: The Commission agrees that definitions for "certified providers" and "performance standards" are needed. The Commission will consider the other items and amend the rule to add definitions as needed at a later time. However, "certification process" is addressed in Subchapter C; "appeals" and "grievance" are addressed in Subchapters D and E. Therefore, no additional definition is required. As the terms "Council" and "TSSB" are not used in the rules, the Commission does not agree that they need to be defined.

The Commission has amended the definition of "Commission" for clarity.

Comments regarding §841.12, Requirements of One-Stop Delivery System, are as follows:

Comment: A commenter recommends adding "through the one-stop delivery system" to the end of §841.12(a)(2) for clarification.

Response: The Commission agrees to amend the proposed rule to ensure consistent use of terminology.

The Commission has added "full service" to §841.12(a) to clarify which career center is required.

General comments regarding Subchapter B, One-Stop Delivery System, are as follows:

The Commission has amended the word "another" to read "other" in §841.35(3) for grammar purposes.

Comment: A commenter expresses concern that case managers at one-stop centers, due to their pivotal importance in the system, be qualified to provide the full array of required services under this section. The commenter requests that the Commission provide job requirements for one-stop center case managers providing these services.

Response: The Commission will recommend to the LWDBs that they adopt job requirements to ensure qualified staffing in this and all other programs. However, both WIA and state statutes concerning training programs emphasize local control in the organization and delivery of services. Therefore, the Commission declines to set job requirements for positions at the local level.

General Comments regarding Subchapter C, Training Provider Certification, are as follows:

Comment: A commenter requests clarification as to whether or not LWDBs may negotiate tuition with training service providers.

Response: Nothing in these rules prohibits a LWDB from negotiating with training providers to achieve the lowest cost for services. The Commission supports activities to increase local competition among training providers.

Comment. A commenter suggests that individuals with ITAs should not have the ability to shop for training services.

Response: Informed consumer choice is an integral part of WIA, and is fully supported by both the Governor and the Commission. Additionally, the law ensures that participating training service providers meet eligibility requirements based, in part, on rigorous performance standards. Therefore, the Commission declines to make this amendment.

Comments regarding §841.38, Initial Certification Process, are as follows:

Comment: A commenter expresses confusion about who should develop training provider application policy and forms - the LWDBs or the Commission.

Response: Each LWDB must develop a written application process for initial certification of specified providers described in §841.38. Such an application must include the key elements as required by the state.

Comments regarding §841.39, Alternative Application for Initial Eligibility Determination, are as follows:

Comment: A commenter addresses the information required of training providers applying to LWDBs for initial eligibility, and suggests the Commission either (1) prepare a standardized application as a model that the LWDBs could vary as long as the required information was included, or (2) that the rule be amended to list information LWDBs should consider requesting from training providers.

Response: The Commission, as the agency designated by the Governor to administer the WIA program, sets policy establishing which information must be provided by training program providers not initially eligible under WIA. Applications developed by the LWDB must include, at a minimum, all of the application elements established by the Commission. The Commission agrees with the suggestion that the Commission prepare a sample application and will work with the LWDBs to develop such a sample document.

Comment: A commenter feels that §841.39(d) creates confusion for consumers regarding ITAs by allowing training providers, who are not seeking WIA certification and, therefore, cannot be accessed through ITAs, to be included on the state list. The commenter requests that the subsection be deleted or clarified.

Response: In order to remove any initial confusion regarding the use of ITAs and to ease the transition to WIA requirements, the Commission agrees to amend the rule to remove the reference to training providers not seeking WIA certification. However, one of the important components of the training provider certification system is informed consumer choice. WIA participants using non-WIA resources may wish to enroll in training programs that are not WIA certified. Additionally, the state list is available to potential students who do not have ITAs. For these reasons, in the future, the Commission will be working with the LWDBs to develop a master list of all training providers in the state. The Commission has also amended §841.47(b) of this title (relating to Certified Provider Lists) to be consistent.

Comment: A commenter recommends eliminating §841.39(f) because of possible hardships to areas with limited staff and newly eligible training providers.

Response: The Commission agrees that any on-site visit requirement may be a burden in some situations and will amend this subsection to require LWDB monitoring that shall include, to the extent reasonable, on-site visits to confirm training provider initial eligibility application information.

The Commission has amended §841.39(b)(9) to allow for greater flexibility.

The Commission has amended §841.39(b)(13) to clarify what is required in the outline of the course or program curriculum.

The Commission has amended the renumbered §839.39(d) by replacing the term "Governor" with the term "Commission" for purposes of consistency.

Comments regarding §841.40, Application Submission, are as follows:

Comment: : A commenter suggests expanding the narrative regarding application submission.

Response: Sections 841.38 and 841.39 include information regarding the process for submitting applications for certification. Additional information will be provided in a reporting and procedures manual developed and disseminated by the Commission. Therefore, the Commission declines to amend the rule.

Comments regarding §841.42, Exceptions to Provider Certification Requirements, are as follows:

Comment: A commenter recommends modifying §841.42(a) to allow on-the-job and customized training providers to provide locally determined performance data, when available. The commenter states that this should be a local decision because (1) historical data may be unavailable and (2) there are no certification requirements under WIA for these providers. The commenter says that as there are no requirements under WIA for certification of on-the-job or customized training providers, the Commission should not add requirements.

Response: WIA provides that the state may require performance data for these types of training providers. The Commission will amend the subsection to require performance data as may be required by the state, and will address potential performance data requirements for on-the-job and customized training providers in a future rule. The Commission also amends §841.42(b) to replace the term "Governor" with the term "Commission" for purposes of consistency.

Comments regarding §841.43, Application for Subsequent Eligibility Determination, are as follows:

Comment: A commenter recommends deleting the phrase "from date of certification" from the first sentence in the subsection because the LWDBs should determine the annual continuing eligibility date.

Response: In recognition of the importance of local control, the LWDBs may request that the state make a certification effective on or after a requested date subject to the state's 30-day review process. The Commission disagrees with the suggested change, but has amended the rule to clarify the intent. Due to changes to this section, the Commission has withdrawn and re-proposed §841.43 of this title (relating to Application for Subsequent Eligibility Determination) for an additional 30-day comment period.

Comment: A commenter suggests that §841.43(e) establishes a four-month timeframe without enrollment as a definition of completion and suggests that this should be a local decision. The commenter further suggests that the Commission establish definitions for core indicators, such as enrollment, completion, and participation, and disseminate them through (1) a technical assistance manual, or (2) rules related to reporting, performance negotiation, and core indicators.

Response: The Commission will consider local criteria for successful course or program curriculum completion submitted by training providers, and §841.39(b)(13)

will be amended to clarify this. The Commission will consider a definition for the term "completion" and will amend the rule to define this term at later time. The other terms referred to by the commenter will be subject to standards and definitions established by the Commission, including timeframes for program participation. The Commission disagrees that timeframes is a local decision. Standards and definitions developed by the Commission with the input of the local LWDBs will be published in a reporting and procedures technical assistance manual. Due to changes to this section, the Commission has withdrawn and re-proposed §841.43 of this title (relating to Application for Subsequent Eligibility Determination) for an additional 30-day comment period.

Comments regarding §841.44, Determination of Subsequent Eligibility, are as follows:

Comment: A commenter suggests the addition of clarifying language pertaining to an LWDB's consideration of local occupational demand when determining subsequent eligibility for a given training program.

Response: The Commission agrees and will amend the proposed rule to require LWDB consideration of current and projected occupational demand. Due to changes to this section, the Commission has withdrawn and re-proposed §841.44 of this title (relating to Determination of Subsequent Eligibility) for an additional 30-day comment period.

Comment: A commenter suggests clarifying the proposed language to better address the intent to utilize skill standards, and specifically those recognized by the Texas Skill Standards Board, in the eligibility determination process.

Response: The Commission agrees and will amend the rule as suggested. Due to changes to this section, the Commission has withdrawn and re-proposed §841.44 of this title (relating to Determination of Subsequent Eligibility) for an additional 30-day comment period.

Comment: A commenter recommends eliminating §§841.44(b)(1) through (b)(4) because the LWDBs lack the expertise and funding to adequately undertake a local skill needs analysis. Further, locally determined skill standards do not advance or establish recognition of statewide or national skills standards.

Response: The Commission agrees with the comment. The intent is not to have LWDBs develop skill standards. Rather the intent of this section is to ensure that employers in each LWDA of the state are involved in identifying skill needs in their area and ensuring training providers use this information when developing new

programs and establishing successful outcomes for these programs. The rule has been amended to clarify the role of employers, LWDBs, and training providers. Due to changes to this section, the Commission has withdrawn and re-proposed §841.44 of this title (relating to Determination of Subsequent Eligibility) for an additional 30-day comment period.

Comments regarding §841.45, Standards of Performance, are as follows:

Comment: A commenter recommends eliminating §§841.45(b)(1) and 841.45(b)(3) relating to performance measures for both training completion and training relatedness employment rates for the following reasons: (1) they are not federally required; (2) training completion may be realized when an individual is employed even without completing a training; and (3) establishing training relatedness rates requires time and funding, and may not be accurately reflected because employers typically classify positions based on insurance ratings rather than job tasks.

Response: The Commission disagrees with the suggested change. WIA requires that training providers submit verifiable program-specific information to be considered for subsequent eligibility, including program completion rates for all individuals participating in the program. Training-relatedness is referenced in WIA as a program quality measure, and the Commission supports the use of it. Terms not defined through the issuance of DOL reporting requirements will be subject to the standards and definitions established by the Commission and published in a reporting and procedures technical assistance manual. Therefore, the Commission declines to delete these subsections.

The Commission has amended §841.45(a) by replacing the term "Governor's" with the term "Commission's" for purposes of consistency.

The Commission has added §841.45(c) to clarify that the certain performance standards may be adjusted and should reflect continuous improvement within the local area.

Comments regarding §841.46, Verifiable Program-Specific Performance Information, are as follows:

Comment: A commenter recommends deleting §841.46(c) if the LWDBs must conduct the independent audit because it is a cost that appears to have little value, especially if performance data is collected through an automated system of unemployment insurance wage record matching.

Response: The Commission agrees. Independent audits will be required only when Commission-approved supplemental methodologies are used to support and supplement the provision of required performance reporting by training providers. In such instances, the audit must be conducted by a certified public accountant on behalf of the training service provider. The rule has been amended to reflect this change. Due to changes to this section, the Commission has withdrawn and re-proposed §841.46 of this title (relating to Verifiable Program-Specific Performance Information) for an additional 30-day comment period.

Comments regarding §841.47, Certified Provider Lists, are as follows:

Comment: A commenter suggests amending the rule to require only annual invitation to training providers to submit an application for certification.

Response: The Commission agrees. The intent was to ensure training provider knowledge of, and access to, the system. However, as there are a variety of ways that training providers can learn about accessing the system other than through twice annual invitations, the Commission will amend the rule to require an annual publication.

Comment: A commenter recommends streamlining the training provider list submission process by requiring LWDBs to submit a complete list annually, and to submit additions to the list within thirty (30) days of approval. Another commenter recommends amending §841.47(c) to require LWDBs to submit training provider lists quarterly, rather than monthly. This will provide consistency with the requirement that LWDBs submit training provider performance data quarterly and thereby reduce LWDB reporting burdens.

Response: The Commission agrees with the need to streamline the process. The Commission believes that submitting the list annually would be appropriate. Therefore, the Commission amends §841.47(c) to require that the list of eligible providers be provided to the Commission annually, with changes or additions submitted monthly in order for the Commission to maintain an updated and complete provider list.

The Commission has amended §841.47(e) of this title (relating to Certified Provider Lists) by deleting the term "initial" for purposes of consistency.

The Commission has amended §841.47(f)(1) of this title (relating to Certified Provider Lists) by replacing the term "Governor" with "Commission" for purposes of consistency.

Comments regarding §841.48, Local Appeals, are as follows:

Comment: A commenter states that §841.48 requires a local appeal process; however §841.47(f) seems to indicate that only the Commission can remove a provider. The commenter asks why involve the local LWDB in the appeals process if the removal decision can only be made by the Commission. The commenter states that this is an additional expense for the LWDB and recommends eliminating the requirement of a local appeals process.

Response: Pursuant to WIA §§122(b)-(c), the LWDBs determine initial and subsequent eligibility of training providers. According to WIA §122(f), the LWDBs may also terminate eligibility of a provider. Since the local programs have to establish a grievance procedure under WIA for other grievances and complaints, it seems prudent to hold the hearing on a denial of provider eligibility by the LWDB at the LWDB level. Therefore, the Commission declines to amend the rule.

The Commission has amended §841.48 of this title (relating to Local Appeals) by adding a subsection (d) for clarification purposes.

Comments regarding §841.93, State Level Informal Resolution and Hearing for Alleged Violations of the Requirements of WIA by the State or for Complaints by Individuals Affected by the Statewide Program, are as follows:

Comment: A commenter asks what the role of the Texas Council on Workforce and Economic Competitiveness is in this process and references §122(f) of WIA.

Response: The Texas Council on Workforce and Economic Competitiveness (Council) participates in the development and review of the state WIA plan. With respect to WIA §122(f), no specific role is identified for the Council.

## **SUBCHAPTER A. GENERAL PROVISIONS**

The rules are adopted under Texas Labor Code §301.061 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs.

### **§841.1. Goal.**

These rules provide the implementation of the Workforce Investment Act (WIA) as it relates to the duties of the Commission and the Local Workforce Development Boards (LWDBs). This implementation accommodates prior consistent state laws as

permitted by WIA. This integration of new federal law and prior existing state law will continue to promote and support Texas' ongoing workforce development reform efforts. WIA compliments Texas' reform efforts, which stress:

- (1) limited and efficient state government;
- (2) local control;
- (3) personal responsibility; and
- (4) support for strong families.

### **§841.2. Definitions.**

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

- (1) Administrative costs - The necessary and allowable costs that are associated with the overall management and administration of the workforce investment system and which are not related to the direct provision of employment and training services, as further defined by the federal regulations and subject to the cost limitations set forth in WIA §134(a)(3)(B) and the cost principles set forth in WIA §184(a)(2)(B).
- (2) Commission - The Texas Workforce Commission as established in the Texas Labor Code, §301.001 and designated by the Governor as the state administrative agency for WIA in Texas.
- (3) Complainant - Any participant or other personally interested or personally affected party alleging a noncriminal violation of the requirements of WIA.
- (4) Customized Training - As defined in WIA §101(8), training that is designed to meet the requirements of an employer, conducted with a commitment by the employer to employ an individual on successful completion of the training and for which the employer pays not less than 50 percent of the cost of the training.
- (5) Hearing Officer - An impartial party who shall preside at a hearing on a grievance.
- (6) ITAs - Individual Training Accounts.
- (7) LWDA - Local Workforce Development Area designated by the Governor as provided in Tex. Gov't Code §2308.252.
- (8) LWDB - Local Workforce Development Board created pursuant to Tex. Gov't Code §2308.253 and certified by the Governor pursuant to Tex. Gov't Code §2308.261.
- (9) On-the-Job Training - As defined in WIA §101(31), training by an employer that is provided to a paid participant while engaged in productive work in a job.
- (10) One-Stop Partner - An entity which makes services available to participants through a one-stop delivery system under the terms of a memorandum of agreement with a LWDB.
- (11) Participant - As defined in WIA §101(34), an individual who has been

determined to be eligible to participate in, and who is receiving services under, a program authorized by WIA.

(12) Respondent - The person, organization or agency against which a complaint has been filed for the alleged violation of the requirements of WIA.

(13) WIA - Workforce Investment Act, P.L. 105-220, 29 U.S.C.A. §1601 et seq.

## **SUBCHAPTER B. ONE-STOP DELIVERY SYSTEM**

The rules are adopted under Texas Labor Code §301.061 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs.

### **§841.11. Requirement to Maintain a One-Stop Delivery System.**

Each LWDB shall maintain a one-stop delivery system, consistent with WIA and prior consistent state law.

### **§841.12. Requirements of a One-Stop Delivery System.**

(a) A one-stop delivery system shall include at least one full service career center which is accessible to employers, workers, and students and which offers core services. Core services, as defined in WIA §134(c) and Tex. Gov't Code Chapter 2308, include:

- (1) outreach;
- (2) intake, which may include worker profiling, and orientation to the information and services available through the one-stop delivery system;
- (3) determinations of whether the individuals are eligible to receive assistance and services through the one-stop delivery system;
- (4) initial assessment of skill levels, aptitudes, abilities, and supportive service needs;
- (5) job search and placement assistance and, where appropriate, career counseling;
- (6) provision of performance information and program cost information on eligible providers of training services as described in Subchapter C of this chapter (relating to Training Provider Certification), provided by program, and eligible providers of youth activities described in WIA §123, providers of adult education described in title II of WIA, providers of postsecondary vocational education activities and vocational education activities available to school dropouts under the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C.A. §2301 *et seq.*), and providers of vocational rehabilitation program activities described in title I of the Rehabilitation Act of 1973 (29 U.S.C.A. §720 *et seq.*);
- (7) provision of information regarding how the local area is performing on the local

performance measures and any additional performance information with respect to the one-stop delivery system in the local area;

- (8) provision of information regarding filing claims for unemployment compensation;
- (9) provision of employment statistics information, including the provision of accurate information relating to local, regional, and national labor market areas, including job vacancy listings in such labor market areas, information on job skills necessary to obtain the jobs listed, and information related to local occupations in demand and the earnings and skill requirements for such occupations;
- (10) provision of accurate information relating to the availability of supportive services, including child care and transportation, available in the LWDA, and referral to such services, as appropriate;
- (11) assistance in establishing eligibility for Welfare to Work activities, Choices, Food Stamp Employment and Training, and programs of financial aid assistance for training and education that are available in the local area; and
- (12) follow-up services including counseling regarding the work place, for participants in workforce investment activities authorized under this chapter who are placed in unsubsidized employment, for not less than 12 months after the first day of the employment, as appropriate.

(b) A one-stop delivery system shall provide access to services as described in the Tex. Gov't Code Chapter 2308 and intensive services as described in the WIA§134(c), which may include the following:

- (1) comprehensive and specialized assessments of the skill levels and service needs of adults and dislocated workers, such as diagnostic testing and use of other assessment tools, in-depth interviewing, and evaluation to identify employment barriers and employment goals;
- (2) development of an individual employment plan and service strategy to identify the employment goals, appropriate achievement objectives, and appropriate combination of services for the participant to achieve employment goals and objectives;
- (3) group counseling;
- (4) individual counseling and career planning;
- (5) centralized and continuous case management; and
- (6) short-term prevocational services including learning skills, communication skills, interviewing skills, punctuality, personal maintenance skills, and professional conduct to prepare individuals for unsubsidized employment or training.

(c) A one-stop delivery system shall provide access to training services as described in WIA§134(c) and the Tex. Gov't Code Chapter 2308. Training services may include the following:

- (1) occupational skills training, including training for nontraditional employment;
- (2) on-the-job training;
- (3) programs that combine work place training with related instruction;
- (4) training programs operated by the private sector;
- (5) skill upgrading and retraining;
- (6) entrepreneurial training;
- (7) job readiness training;
- (8) adult education and literacy activities in combination with services with activities described in 1-7 above; and
- (9) customized training conducted with a commitment by an employer or group of employers to employ an individual upon successful completion of training.

(d) A one-stop delivery system shall offer access to all other permissible local employment and training activities included in the local workforce development plan. Such activities may include discretionary one-stop activities, supportive services, and needs-related payments as outlined in WIA §134(e).

(e) A one-stop delivery system shall offer access to all programs and activities carried out by the one-stop partners.

(f) A one-stop delivery system shall offer access to the information described in §15 of the Wagner-Peyser Act and all job search, placement, recruitment and other labor exchange services authorized under the Wagner-Peyser Act (29 U.S.C. 49 *et seq.*)

### **§841.13. Limitations on Delivery of Services.**

Delivery of services under §841.12 of this title (relating to Requirements of a One-Stop Delivery System) are subject to state law requirements on local workforce board organization and service delivery structure as found in Tex. Gov't Code §2308 and Chapter 801 of this Title.

## **SUBCHAPTER C. TRAINING PROVIDER CERTIFICATION**

The rules are adopted under Texas Labor Code §301.061 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs.

### **§841.31. Scope and Coverage.**

This subchapter establishes rules governing the state's training provider certification system as required by WIA §122 and is applicable to providers of training services for adults and dislocated workers.

### **§841.32. Training Services.**

(a) As used in this subchapter, training services shall mean those services which are described in WIA §134(d)(4)(D) and are provided by an LWDB to eligible adults and dislocated workers.

(b) Training services shall be directly linked with employment opportunities on the list of occupations in demand for the LWDA of the participant's residence or another area to which the participant is willing to relocate. In addition, each LWDB shall develop a process for considering requests from participants for training in occupations not on the demand list if sufficient and verifiable documentation is provided.

(c) Training services shall be provided in such a manner as to maximize consumer choice in the selection of eligible providers.

(d) Training services shall be provided through the use of individual training accounts except for those situations described in §841.35 of this title (relating to Training Services Which are Not Provided Through Individual Training Accounts).

### **§841.33. Determining Occupations in Demand.**

(a) Each LWDB shall annually establish a list of occupations in demand in the LWDA.

(b) In establishing the list of occupations in demand, the LWDB shall consider:

- (1) labor market information provided by the Commission;
- (2) information provided by businesses and business organizations in the LWDA; and
- (3) information provided by workers and worker organizations in the LWDA.

### **§841.34. Individual Training Accounts.**

(a) An ITA is an account established by a one-stop operator on behalf of an eligible adult or dislocated worker program participant and funded with WIA adult and dislocated worker funds. Participants may use ITAs for training services for skills in demand or allowed occupations as defined by the LWDB from training providers on the state-distributed list of approved eligible training providers.

(b) At its discretion, a LWDB is authorized to approve a request for training for occupations not on the occupations in demand list, if sufficient and verifiable documentation is provided.

### **§841.35. Training Services Which are Not Provided Through Individual Training Accounts.**

Training services may be provided pursuant to a contract for services instead of an ITA as provided in WIA §134(d)(4)(G)(ii) in the following situations:

- (1) the services are on-the-job training provided by an employer or are customized training, as defined in §841.2 of this title (relating to Definitions);
- (2) the LWDB determines there is an insufficient number of eligible providers of training services in the LWDA to accomplish the purposes of a system of ITAs; or
- (3) the LWDB determines that there is a training services program of demonstrated effectiveness offered in the LWDA by a community-based organization or other private organization which serves participant populations that face multiple barriers to employment, including one or more of the following categories:
  - (A) individuals with substantial language or cultural barriers;
  - (B) offenders;
  - (C) homeless individuals; or
  - (D) other such population defined by the LWDB.

### **§841.36. Priority of Access to Services.**

(a) The LWDBs shall determine whether WIA funds allocated to the LWDA for adult employment and training activities are insufficient to meet the anticipated request for services. The LWDBs' local plans shall reflect this determination and the basis for the determination.

(b) If a determination is made that funds are insufficient, the LWDBs shall determine the priority of access to services for participants, in compliance with WIA requirements. Priority for intensive services and training services shall be given to recipients of public assistance and other low-income individuals in the LWDA. The LWDB shall develop instructions for one-stop operators in the LWDA regarding the provision of services related to such priorities.

(c) If a determination is made that WIA funds are sufficient, the LWDBs shall provide services to any eligible participant.

### **§841.37. Coordination of Services.**

(a) Prior to enrolling a participant in an adult education or literacy activity provided in combination with other training services, the one-stop operator shall develop an individual employment plan with the participant. The plan shall identify the skill training for the occupation in demand that will be pursued and the required skill competency level associated with the additional training service.

(b) LWDBs shall collaborate with adult education and literacy providers as well as other providers, whenever possible, to develop coordinated training activities.

#### **§841.38. Initial Certification Process.**

Each LWDB shall develop a written application process for initial certification for the following providers of training services when offering the programs described:

(1) a postsecondary educational institution that:

(A) is eligible to receive federal funds under Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*), and

(B) provides a program that leads to an associate degree, baccalaureate degree, or certificate; or

(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.*

#### **§841.39. Alternative Application for Initial Eligibility Determination.**

(a) The following entities shall be eligible to receive WIA funds if they complete the provider certification process and are determined eligible for participation by a LWDB in the LWDA in which the provider desires to provide training services and the Commission:

(1) public or private providers of a program of training services, including faith-based providers which are not:

(A) postsecondary educational institutions that are eligible to receive federal funds under Title IV of the Higher Education Act of 1965 (20 U.S.C. §1070 *et seq.*), and provide programs that lead to an associate degree, baccalaureate degree or certificate; or

(B) entities that carry out programs under the Act of August 16, 1937, also known as the "National Apprenticeship Act," 50 Stat. 664, chapter 663, 29 U.S.C. 50 *et seq.*;

(2) postsecondary educational institutions which seek to receive WIA funding for a program that does not lead to an associate degree, baccalaureate degree or certificate; and

(3) providers that carry out programs under the Act commonly known as the National

Apprenticeship Act that seek to receive WIA funding for a program not covered by the National Apprenticeship Act.

(b) All training provider applicants 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;
- (3) the name of the program(s) of training services submitted for WIA funding;
- (4) the total hours of instruction associated with each program of training services;
- (5) the cost of each program of training services, including tuition, fees, books, and any required tools, uniforms, equipment, or supplies;
- (6) a brief description of the training facility or training provider, not to exceed 100 words;
- (7) a brief description of each program of training services;
- (8) a description of the skill set which will be acquired through each program of training services;
- (9) a list of occupations determined by using a coding system specified by the Commission, in which these skill sets are of primary interest;
- (10) if any of the occupations described above 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;
- (11) description of the class size, instructor/student ratio;
- (12) information on whether the students in the course are eligible for Title IV of the Higher Education Act funding (Pell grant);
- (13) an outline of the course or program curriculum, including criteria for successful completion;
- (14) the qualifications of the training instructors;
- (15) a description of any minimum entry level requirement (e.g. reading or math level, previous education requirements such as high school diploma or GED);
- (16) description of equipment utilized in the course and equipment/student ratio;
- (17) description of employer support of the program; and
- (18) any additional information that is required by the LWDB in the LWDA in which the training provider is located.

(c) Training provider applicants who provide training on the date of application through a program for which they are seeking certification shall include in their application the following verifiable performance information, or appropriate portion of verifiable performance information, for the program(s) of training services:

- (1) the program completion rates for all individuals participating in the applicable program;
- (2) the percentage of all individuals participating in the applicable program who obtained unsubsidized employment;

(3) the percentage of all individuals participating in the applicable program who obtained unsubsidized employment in an occupation related to the program conducted;

(4) the wages at placement in employment of all individuals participating in the applicable program; and

(5) a description of the methodology that will be utilized to collect and verify performance information.

(d) Each LWDB shall annually establish minimum requirements for initial eligibility. Such requirements shall include consideration of the information required by §841.44(a) of this title (relating to Determination of Subsequent Eligibility). The LWDB shall provide to each applicant the current levels of performance required by the Commission or levels of performance required by the LWDB if higher than those established by the Commission.

(e) For purposes of confirming training provider initial eligibility application information, and as determined reasonable by LWDBs, on-site visits shall be made by LWDB staff or representatives to training provider program sites.

#### **§841.40. Application Submission.**

Applications for initial eligibility determination shall be submitted to the LWDB in the LWDA in which the provider of training services desires to provide training. Applications will be accepted throughout the year.

#### **§841.41. Initial Eligibility Determination.**

(a) A LWDB shall provide a written notice of determination of acceptance or rejection of an initial application to an applying entity within ninety (90) calendar days of the receipt of the completed initial eligibility determination application.

(b) LWDB policy shall determine the circumstances under which reconsideration of an application may be afforded to an entity whose initial application for provider certification was denied. An entity whose application for certification was denied may reapply no sooner than 6 months after the date of the written notice of denial.

#### **§841.42. Exceptions to Provider Certification Requirements.**

(a) On-the-job or customized training providers are not subject to the training provider certification requirements. In order to be eligible to receive WIA funding, such training providers shall provide to one-stop operators the performance information as may be required by the Commission.

(b) Providers of youth activities are not subject to the training provider certification system and are not eligible to provide training through the use of ITAs. Providers of youth activities are selected through a competitive procurement by LWDBs in consultation with providers of youth services and based on criteria contained in the state plan. Eligible providers of youth activities are subject to the Commission's standards for core indicators of performance established for youth programs in WIA.

#### **§841.45. Standards of Performance.**

(a) Each LWDB shall adopt local performance standards within 30 calendar days of the Commission's publication of state performance standards. LWDB standards shall meet or exceed the standards adopted by the Commission.

(b) Standards shall be developed in the following performance measures:

- (1) training completion rate,
- (2) entered employment rate,
- (3) training relatedness employment rate,
- (4) average earnings change in six months,
- (5) six months employment retention rate, and
- (6) educational or occupational skills credential rate.

(c) Performance standards for employment at six months, wages at six months, and rate of licensure, certification, degree completion, and other skill attainment measures may be adjusted by the state for local conditions and should reflect continuous improvement within the local area.

#### **§841.47. Certified Provider Lists.**

(a) At least annually, the LWDB shall publish in a newspaper of general circulation in the LWDA an invitation to training providers to submit an application.

(b) Each LWDB shall develop a list of providers determined to be initially eligible and retain on that list providers determined to be subsequently eligible to continue to receive WIA funds to provide training services.

(c) Each LWDB shall provide the list of providers determined to be initially eligible to the Commission annually, and report any changes to the list monthly. The submission shall be in a format prescribed by the Commission.

(d) On placing or retaining a provider on the list, the LWDB shall submit to the Commission the performance and cost information outlined in §841.43(b) of this title (relating to Application for Subsequent Eligibility Determination) supplied by the

provider. The LWDB shall provide the information to the Commission no later than 30 calendar days from receipt of the information by the LWDB.

(e) The Commission shall publish the program, performance, and cost information of each program receiving eligibility certification.

(f) The Commission may remove a provider from the list of eligible providers or restrict WIA funding eligibility if the Commission determines that:

(1) the provider does not meet the performance levels established by the Commission, or

(2) the training provider has committed fraud or has violated applicable state or federal law, including prohibitions against discrimination and requirements related to the Americans with Disabilities Act.

(g) If the Commission, after consultation with an LWDB, determines that a provider, or an individual providing information on behalf of the provider, has intentionally supplied inaccurate program performance information, the Commission shall terminate the eligibility of the provider to receive funds for training services for a period of not less than two years.

(h) The Commission shall provide written notice of the removal of a provider from the list of eligible providers to both the LWDB and the training provider. The notice will include a description of the appeal process.

#### **§841.48. Local Appeals.**

(a) Each LWDB shall develop a written appeals process for appeals requested by providers found by the LWDB to be ineligible to receive WIA funding for training services.

(b) This procedure shall include an opportunity for a hearing.

(c) A final written decision on the appeal shall be provided within 60 days of the date of the LWDB's receipt of the request for appeal.

(d) A provider claiming that it was denied a hearing under this section may file a grievance under §841.62(a).

#### **§841.49. State Level Appeals.**

(a) A Commission determination that a provider is not eligible to receive WIA funding may be appealed. The written request for an appeal must be received by the Commission within 30 days of the date of the written notification to the provider of the determination of ineligibility. Either the LWDB in the area in which the training provider is located or the training provider may request an appeal.

- (b) A hearing shall be conducted by a hearing officer employed by the Commission.
- (c) A written decision shall be provided within 60 days of the date of receipt of the request for a hearing.

(d) The decision of the hearing officer shall be final. **SUBCHAPTER D. LOCAL AREA GRIEVANCE PROCEDURE**

The rules are adopted under Texas Labor Code §301.061 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs.

**§841.61. Purpose and Coverage.** (a) This subchapter establishes procedures for resolving allegations of violations of the requirements of WIA in the operation of local WIA programs and activities.

(b) These procedures cover complaints alleging a noncriminal violation of the requirements of WIA pursuant to WIA§181, and do not apply to complaints of discrimination. The Commission may waive specific provisions of this grievance procedure.

(c) All information and complaints involving allegations of fraud, abuse or other criminal activity shall be reported directly to the Texas Workforce Commission, Office of Investigations, 101 E. 15th Street, Austin, TX 78778-0001.

(d) All complaints of discrimination shall be handled in accordance with WIA §188.

**§841.62. Grievance Filing Procedures at the Local Level.**

(a) Any participant or other personally interested or personally affected party alleging a violation of the requirements of WIA at the local level may file a complaint by submitting a written grievance to the LWDB where the alleged action took place. The grievance must be signed and dated by the complainant and shall include the following information:

- (1) the name, complete address, and telephone number for the person or organization filing the complaint;
- (2) a detailed description of the action which is the subject of the complaint, including reference or description of the provision that was allegedly violated;
- (3) a description of how they were personally affected; and
- (4) the name and address of each party or parties believed to be responsible for the

action which is the subject of the complaint. The complainant must explain how each party is responsible for the action which is the subject of the complaint.

(b) To facilitate the filing of a grievance or complaint, the complainant may request a WIA Grievance Information Form from the LWDB or send a written request to the Texas Workforce Commission, Equal Opportunity Officer, at 101 E. 15th Street, Austin, TX 78778-0001.

#### **§841.63. Time Limitations at Local Level.**

(a) All complaints of noncriminal violations of the requirements of WIA must be made within 180 days of the alleged action. The time limitations for complaint resolution shall begin to run upon the date of receipt by the LWDB of a properly completed written grievance.

(b) All of the complainant's outstanding and unresolved allegations against the respondent must be described and consolidated into a single complaint at the time of filing. Any allegation not consolidated into the filed complaint prior to the informal resolution shall be deemed waived.

#### **§841.64. LWDB Responsibilities.**

Each LWDB shall adopt a written grievance procedure and ensure that its WIA contractor and subrecipients post in a public location a notice that a copy of the grievance rules are available upon request. The LWDB shall also ensure that:

- (1) the Commission receives a photocopy of each complaint postmarked within three working days following the filing of such complaint;
- (2) upon request, the complainant receives information regarding WIA grievance procedures;
- (3) complete and accurate copies of all complaint correspondence and records of all complaint proceedings are maintained; and
- (4) all LWDB contractors are fully complying with the terms of the WIA grievance procedures.

#### **§841.65. Local Level Informal Conference Procedure.**

(a) The LWDB shall ensure that there is an opportunity for an informal resolution.

(b) The LWDB shall appoint an impartial Hearing Officer to preside at the informal conference.

(c) The informal conference may be attended by the complainant, the respondent, and any other persons with information or knowledge relevant to the complaint considered necessary by the Hearing Officer for a fair determination of the issues. Only those issues presented at the informal conference may be addressed in subsequent hearings.

(d) The Hearing Officer shall notify all parties of the time, date, and location for the informal conference.

e) The Hearing Officer shall provide each party with a written determination, including a statement of whether or not a resolution was reached, the details of any resolution and, if the complaint was unresolved, notice to the complainant of the opportunity for a local level hearing.

(f) The LWDB shall ensure that the informal conference, issuance of the written determination, and notice of the opportunity for a local level hearing, is completed within 20 days of the LWDB's receipt of a properly completed complaint form.

#### **§841.66. Local Level Hearing Procedure.**

(a) An LWDB shall provide a hearing at the request of either party who is dissatisfied with the results of the informal conference. The request for a hearing must be in writing and mailed within 14 days of the date the written determination was mailed.

(b) The LWDB shall select an impartial Hearing Officer who was not involved in the original decision.

(c) The LWDB shall ensure that the hearing, issuance of the written determination, and notice of the opportunity to appeal to the Texas Workforce Commission, are completed within 60 days of the LWDB's receipt of a properly completed complaint form.

(d) The LWDB shall ensure that the complainant is informed that withdrawal of the request for a hearing may be submitted by written notice of withdrawal to the Hearing Officer at any time prior to the hearing date.

(e) The Hearing Officer shall conduct the hearing, which may be attended by the complainant, the respondent, and any other persons with information or knowledge relevant to the complaint and considered necessary by the hearing officer for a fair determination of the issues.

(f) The Hearing Officer shall fully consider evidence relevant to the complaint in order to reach a fair decision based on such evidence. At any time during testimony,

the Hearing Officer may ask questions to elicit additional facts and to clarify the issues or statements of a party or witness. The Hearing Officer may interrupt testimony to discourage irrelevant lines of testimony or inquiry, to avoid cumulative evidence, and to maintain or restore efficient order to the proceeding.

(g) The Hearing Officer shall make an audible, understandable electronic recording of the hearing.

(h) The Hearing Officer shall inform all parties that, for each issue considered, the complainant is responsible for proving that the actions complained of involved a violation of WIA, WIA regulations and rules, a contract or other agreement under WIA, or were committed in connection with the operation of a WIA program, and caused specific harm or injury either to the complainant or to the WIA program.

#### **§841.67. Written Decision.**

The Hearing Officer shall provide a written decision to all parties to the complaint and to the Commission. Such written decision shall contain at minimum the following information:

- (1) the time, date, and location of the hearing;
- (2) the names of all persons present at the hearing and the capacities in which they appeared;
- (3) a synopsis of the issues and the facts found to exist by the Hearing Officer;
- (4) a statement of the decision and the basis for such decision; and
- (5) a statement of any remedies to be imposed.

#### **§841.68. Remedies.**

The remedies that may be imposed are enumerated at WIA §181(c)(3).

#### **§841.69. Appeal.**

(a) If no decision is mailed within 60 days or if either party is dissatisfied with the local hearing decision, the parties may appeal to the Texas Workforce Commission by sending a written notice of appeal to the Equal Opportunity Officer, 101 E. 15th Street, Austin, TX 78778-0001.

(b) The following time limitations apply to appeals to the Commission:

- (1) if no decision is mailed within 60 days of the date of receipt of the complaint, the appeal must be filed with the Commission no later than 90 days after the original

complaint had been filed; and

(2) if either party is dissatisfied with the local level hearing decision, the appeal must be filed no later than 14 calendar days after the decision has been mailed.

### **SUBCHAPTER E. STATE LEVEL HEARING**

The rules are adopted under Texas Labor Code §301.061 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs.

#### **§841.91. Scope.**

This subchapter applies to the following:

- (1) appeals made under §841.69 of this title (relating to Appeal);
- (2) alleged violations of the requirements of WIA by the State;
- (3) complaints from individuals affected by the statewide program;
- (4) denials of area certification;
- (5) referral to local level grievance process; and
- (6) appeal to the Secretary of Labor.

#### **§841.92. Review Procedure for Appeals Made Under §841.69.**

- (a) The state shall select an impartial Hearing Officer.
- (b) The Hearing Officer shall review the record to determine if the party was afforded a process that was held in compliance with WIA and the local grievance procedure.
- (c) Within 60 days of receipt of the request for review, the Hearing Officer shall render a written decision either affirming the local level decision or remanding.
- (d) If the Hearing Officer remands the complaint to the local area grievance process, the LWDB shall hold a hearing on the complaint within 10 days of receipt of the Hearing Officer's decision and render a decision within 10 days of the hearing.

#### **§841.93. State Level Informal Resolution and Hearing for Alleged Violations of the Requirements of WIA by the State or for Complaints by Individuals Affected by the Statewide Program.**

- (a) All complaints of noncriminal violations of the requirements of WIA must be made within 30 days of the alleged action. The time limitations for complaint

resolution shall begin to run upon the date of receipt by the Commission of a properly completed written grievance.

(b) All of the complainant's outstanding and unresolved allegations against the respondent must be described and consolidated into a single complaint at the time of filing. Any allegation not consolidated into the filed complaint prior to the informal resolution shall be deemed waived.

(c) The state shall select an impartial Hearing Officer.

(d) The Hearing Officer shall provide an opportunity for an informal resolution and for a formal hearing to be held, and decision to be rendered, within 60 days of receipt of the complaint.

(e) The complainant and respondent may be represented at the hearing by an attorney or other representative, and shall have the right to call witnesses and introduce documentary evidence at the hearing, as deemed necessary by the Hearing Officer. The individual parties shall bear the cost of such representation.

(f) The complainant shall bear the burden of proof by a preponderance of the evidence.

(g) The Hearing Officer shall ensure that an audible, understandable electronic recording is made of the hearing.

(h) Within 60 days of receipt of a complaint, the Hearing Officer shall mail a written Decision.

#### **§841.94. Appeal of Denial of LWDA Certification.**

All appeals of denial of LWDA certification shall be referred to the Texas Council on Workforce and Economic Competitiveness.

**§841.95. Referral of Local Complaints.** Complaints arising under Subchapter D, and made directly to the Commission, shall be referred to the appropriate LWDA for resolution in accordance with Subchapter D.

**§841.96. Appeal to Secretary of Labor.** An appeal may be made to the Secretary of Labor pursuant to 20 CFR §§667.610, 667.640, 667.645, and 667.650.