

Sections 841.43, 841.44 and 841.46 Workforce Investment Act

The Texas Workforce Commission (Commission) adopts new §§841.43, 841.44, and 841.46, relating to the implementation of the Workforce Investment Act as published in the June 18, 1999, issue of the *Texas Register* (24 TexReg 4542). Sections 841.43, 841.44 and 841.46 are adopted with changes to the proposed text.

The purpose of §841.43 is to set forth the requirements for submitting an Application for Subsequent Eligibility Determination. Section 841.44 sets forth the items considered in a Determination of Subsequent Eligibility. Section 841.46 sets forth the provisions applicable to Verifiable Program-Specific Performance Information.

These sections were originally published in the April 16, 1999, issue of the *Texas Register* (24 TexReg 3054). Based on a desire for further public comment and revisions to the initial proposal, the Commission re-proposed these sections for an additional 30-day comment period in the Texas Register on June 18, 1999.

The Commission received comments from two commenters, the West Central Local Workforce Development Board and the Texas Skill Standards Board, regarding the proposed rules. The commenters did not state whether they were for or against the rule but requested changes to the rules. The comments and responses are set forth as follows:

Comment. Regarding §841.44(b)(1), the commenter suggested deleting the phrase "when available" to ensure that only those skill standards recognized or conditionally recognized by the Texas Skill Standards Board are used to develop training criteria and outcomes criteria.

Response. The Commission agrees with the comment and revises the rule accordingly. The intent of the rule is to ensure that only those skill standards recognized or conditionally recognized by the Texas Skill Standards Board be taken into consideration by Local Workforce Development Boards to develop training and outcomes criteria. The commenter's suggested change further clarifies the Commission's intent.

Comment. Regarding §841.44(b)(2), the commenter recommended replacing the words "industry-defined" and "recognized" in this subsection with the phrase "industry endorsed skill standards" to avoid confusion between the Texas Skill Standards Board and the Commission. The law governing the Texas Skill Standards Board, as well as public information disseminated by the Board, uses the words "industry-defined" and "recognized."

Response. The Commission agrees with the comment and revises the rule accordingly. The Commission will amend the rule to use the term "industry-endorsed skill standards."

Comment: Regarding §841.46(e), the commenter stated that the section requires quarterly reporting by training providers. The commenter recommended flexibility in this requirement to accommodate schools in rural settings with limited WIA enrollment. The commenter believed it could be an undue burden on the school to provide a quarterly report when their enrollment of WIA participants is frequently less than 5 individuals. The commenter encouraged TWC to consider language that would allow for different requirements, such as every 6 months or annually for schools with low enrollment numbers.

The Commission agrees with the commenter and revises the rule accordingly to allow for more flexibility in the reporting process. Specifically, the following language is added to 841.46(e), "If the Commission determines that the size of the program or other circumstances exist that would justify a different reporting schedule, the Commission may approve a different reporting schedule for an LWDB that makes such a request."

Technical corrections are added for clarity. In §§841.43(a) and 841.46(d), "30 day" is changed to "30-day." In paragraph 841.44(a)(5), the word "and" is deleted. In subsections 841.46(d) and (e), "in" is changed to "within" and "quarterly" is changed to "quarter" respectively.

The new sections 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.

§841.43. Application for Subsequent Eligibility Determination.

(a) All training services providers, including training providers who were determined to be eligible under §§841.38 and 841.39, shall annually, from date of certification, establish continuing eligibility to receive funds from WIA to provide training services. The LWDB may request that the state make a certification effective on or after a requested date subject to the state's 30 day review period.

(b) Each training services provider shall provide verifiable program-specific performance information as required, and in a format and on a schedule determined by the Commission.

(c) The Commission and the LWDB may accept program-specific performance information consistent with the requirements for eligibility under Title IV of the Higher Education Act of 1965 from the provider for purposes of enabling the provider to fulfill the applicable requirements of this section if the information is substantially similar to the information otherwise required.

§841.44. Determination of Subsequent Eligibility.

(a) Each LWDB shall annually establish minimum requirements for subsequent eligibility. In determining subsequent eligibility, LWDBs shall consider the following:

(1) the specific economic, geographic, and demographic factors in the local areas in which providers seeking eligibility are located;

(2) the characteristics of the populations served by providers seeking eligibility, including the demonstrated difficulties in serving such populations, where applicable;

(3) current and projected occupational demand within the local area;

(4) the performance of a provider of a program(s) of training services, including the extent to which the annual standards of performance established by the LWDB have been achieved;

(5) the program cost of training services;

(6) the involvement of employers in the establishment of skill requirements for the training program; and

(7) the feedback of employers who employ individuals who have recently completed WIA-funded training to verify that the training provided produced the expected skills.

(b) No later than July 1, 2000, each LWDB shall ensure that training providers, in developing programs of training services and establishing performance criteria for successful course completion, use in descending order:

(1) skill standards recognized or conditionally recognized by the Texas Skill Standards Board;

(2) industry-endorsed skill standards; or

(3) skill requirements determined by employers.

(c) LWDBs may require enhancements to programs or courses to meet local industry needs.

§841.46. Verifiable Program-Specific Performance Information.

(a) Performance information submitted for a training services program, as a part of the subsequent eligibility determination process, shall be verifiable.

(b) Participating training providers shall provide to the Commission the participant and employer information determined by the Commission to be necessary to utilize unemployment insurance wage records and employer-based, follow-up surveys to obtain performance information. The training providers shall submit the information in a form and format determined by the Commission.

(c) Subject to approval by the Commission, alternate procedures may be used to collect and verify supplemental performance information in addition to those described in §841.46(b). Approval or use of an alternate procedure shall not release the training provider from the obligation to provide the information required by §841.46(b). Submission of supplemental performance data obtained through use of an alternate procedure must be in accordance with formats determined by the Commission.

(d) An independent audit of any alternate methodology used shall be conducted on an annual basis by a certified public accountant for programs of training services in which 100 or more WIA-supported students are served within a twelve-month period. Programs that serve less than 100 WIA-supported students within a twelve-month period shall provide for an independent audit of the performance data collection methodology every two years. A copy of the report shall be made available to the LWDB and to the Commission within 30-days of the completion of the report.

(e) Verifiable program performance information shall be submitted on a calendar quarter basis in a format and on a schedule established by the Commission. If the Commission determines that the size of the program or other circumstances exist that would justify a different reporting schedule, the Commission may approve a different reporting schedule for an LWDB that makes such a request.

(f) The Commission may conduct performance verification throughout the year and may require training providers to submit additional information to resolve performance reporting anomalies or irregularities.

(g) Providers of training services shall retain participant program records for a period of three years from the date the participant completes the program.