

Chapter 841. WORKFORCE INVESTMENT ACT
Subchapter C. TRAINING PROVIDER CERTIFICATION
40 TAC §841.44

The Texas Workforce Commission (Commission) proposes an amendment to §841.44 relating to the Determination of Subsequent Eligibility of training providers.

Background and Purpose: The Workforce Investment Act (WIA) requires that before an entity can provide training services to WIA participants with individual training accounts, the entity must be determined eligible to receive WIA funds. WIA lists some of the required elements for both initial and subsequent eligibility determinations. Chapter 841 describes the process and procedure for making initial and subsequent eligibility determinations. The proposed amendment to §841.44 clarifies that in applications for subsequent determinations of eligibility, just as in initial applications, the local workforce development board (Board) is responsible for providing notice of determinations of eligibility. Further, in determinations of subsequent eligibility, the Board must provide notice within 30 days of receipt of the subsequent eligibility application. The proposed amendment also provides for reconsideration of a denial of an application for subsequent eligibility and reapplication.

Randy Townsend, Chief Financial Officer, has determined that for the first five years the rule is in effect, the following statements will apply:

there are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rule;

there are no estimated reductions in costs to the state or to local governments expected as a result of enforcing or administering the rule;

there are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing and administering the rule;

there are no foreseeable implications relating to costs or revenues to the state or to local governments as a result of enforcing or administering the rule; and

there are no anticipated costs to persons who are required to comply with the rule as proposed.

Mr. Townsend has also determined that there is no anticipated adverse impact on small businesses (including micro-businesses) as a result of enforcing or administering the rule because any regulatory burdens or impact on small businesses, if any, would be a result of federal requirements, federal WIA statute and regulations and other federal regulations and requirements, which are the basis for this proposed rule. In addition, training services providers are required to submit specific verifiable information on performance to Boards and the Commission in order to establish and retain continuing eligibility to receive funds from WIA to provide training services. We cannot determine the likely or potential fiscal burden or impact of that provision, although our presumption is that it would be insignificant, customary, or of no financial consequence.

Jean Mitchell, Director of Workforce Development, has determined that the public benefit anticipated as a result of the rule as proposed will be to provide clarification relating to how determinations of subsequent eligibility will be handled by the Commission and the Boards that will in turn clarify the application process.

Mark Hughes, Director of Labor Market Information, has determined that there is no foreseeable negative impact upon employment conditions in this state as a result of the proposed rule.

Comments on the proposed rule may be submitted to Barbara Cigainero, Workforce Development Division, Texas Workforce Commission, 101 East 15th Street, Room 130BT, Austin, Texas 78778; Fax Number 512-463-3424; or E-mail to barbara.cigainero@twc.state.tx.us. Comments must be received by the Commission no later than 30 days from the date this proposal is published in the *Texas Register*.

The amended rule is proposed under Texas Labor Code §§301.061 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission services and activities.

The proposal affects the Texas Labor Code, Title 4.

§841.44. Determination of Subsequent Eligibility.

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

(1)-(3) (No change.)

(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 Board [~~LWDB~~] have been achieved;

(5)-(7) (No change.)

(b) No later than July 1, 2000, each Board [~~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)-(3) (No change.)

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

(d) For programs of training services certified as initially eligible on or after July 1, 2000, a Board shall provide a written notice of determination of acceptance or rejection of a subsequent eligibility application to an applying entity within 30 calendar days of the receipt of the completed subsequent eligibility determination application.

(e) Board policy shall determine the circumstances under which reconsideration may be afforded to an entity whose application for subsequent eligibility certification determination was denied. An entity whose application for recertification was denied may reapply no sooner than six months after the date of the written notice of denial.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on March 23, 2000.

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J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: May 7, 2000

For further information, please call: (512) 463-8812