

Operational Policy No. OP – 423, Change 1

Subject: WIOA Eligible Training Provider Certification System

Effective: PY2017 – 07/01/2017

BACKGROUND:

The workforce development system, established under WIOA, emphasizes informed consumer choice, job- driven training, provider performance, and continuous improvement. The quality and selection of providers and programs of training services is vital to achieving these core principles. As required by WIOA Sec. 122, states, in partnership with Local Boards, must identify eligible training providers (ETPs) and programs that are qualified to receive WIOA title I-B funds to train adults, dislocated workers **and out-of- school youth ages 16 through 24***, including those with disabilities. The approved State list of eligible training providers and programs serves is an important tool for participants seeking training to identify appropriate providers and programs, and relevant information, such as cost and program outcomes. WIOA Sec. 122 (c) specifies that states must establish an application procedure for training providers and programs to maintain their eligibility and the eligibility of their programs.

****Although youth programs are not specifically mentioned in the federal guidance, the SAE requires youth providers and programs who both serve WIOA program participants AND confer an industry recognized certificate or license to be registered and approved on the ETP system.***

OBJECTIVE:

This policy guidance provides new information, criteria, and procedures that inform the local workforce development boards, local administrative entities and workforce system partners of changes to the Eligible Training Provider system. These new procedures are based on the passage of Workforce Innovation and Opportunity Act final rules jointly published by U.S. Department of Labor and Education on August 19, 2016 and effective October 18, 2016, and guidance from NMDWS.

REFERENCE(S)

- Workforce Innovation and Opportunity Act of 2014, Sections 116, 122, and 134, effective July 1, 2015
- Workforce Innovation and Opportunity Act, final rule published August 19, 2016, 20 CFR Parts

§677.230, §679.370-380, §680.400-530, §683.630

- Training and Employment Guidance Letter (TEGL) 41-14 and Change 1 for WIOA Title I Training Provider Eligibility Transition

- Department of Workforce Solutions Workforce Guidance Letter: DWS 16-004
- Department of Labor, 29 CFR Part 38, WIOA Section 188, Implementation of the Nondiscrimination and Equal Opportunity Provisions, final rule published December 2, 2016

POLICY:

Eligible Providers of Training Services

Only providers that the State determines to be eligible, as required in WIOA sec. 122, may receive training funds under WIOA title I-B to provide training for participants enrolled in a WIOA-funded program of training services.

Eligible training providers include:

- Post-secondary education institutions;
- Registered Apprenticeship programs;
- Other public or private providers of training, which may include joint labor-management organizations and eligible providers of adult education and literacy activities under title II if such activities are provided in combination with occupational skills training;
- Local Boards, if they meet the conditions of WIOA sec. 107(g)(1); and
- Community Based Organizations (CBOs) or private organizations of demonstrated effectiveness that provide training under contract with the Local Board.

Eligible training providers are subject to the equal opportunity and nondiscrimination requirements contained in Section 188 of WIOA. The types of eligible training providers for WIOA are substantively the same as those under WIA. The requirements to become an eligible provider of training services apply to all organizations providing WIOA title I-B-funded training to adults and dislocated workers, **and out-of-school youth ages 16 through 24***, with the specific exception of Registered Apprenticeship programs.

Note: Please see the separate section on Registered Apprenticeship programs as many of the ETPL requirements regarding these types of programs are different.

Eligible Programs of Training Services

A program of training services is defined as one or more courses or classes, or a structured regimen that leads to a recognized post-secondary credential, secondary school diploma or its equivalent, employment, or measurable skill gains toward such a credential or employment. These training services could be delivered in person, on-line, or in a blended approach.

Not all allowable types of training services are subject to the requirements of the eligible training provider provisions in WIOA title I-B. Training services exempt from the Section 122 eligibility requirements include:

- On-the-job training; customized training; incumbent worker training; transitional employment; or
- The circumstances described at WIOA sec. 134(c)(3)(G)(ii), where the Local Board determines that:
 - There are insufficient providers, or
 - There is a training services program with demonstrated effectiveness offered in the local area by a community-based organization or other private organization to serve individuals with barriers to employment, or
 - It would be most appropriate to award a contract to an institution of higher education or other eligible provider of training services in order to facilitate the training of multiple individuals in in-demand industry sectors or occupations, and such contract does not limit customer choice; or
 - When the Local Board provides training services through a pay-for-performance contract.

Providers and programs that meet eligible training provider criteria and are certified on the State ETP List are considered eligible to receive Individual Training Account funds for the provision of training services of WIOA enrolled participants.

Roles and Responsibilities

The Department of Workforce Solutions, State Administrative Entity (SAE), is responsible for the following:

- Establishing requirements for the Eligible Training Provider List system, to include:
 - hosting the ETPL through a web-based platform; and
 - establishing the web application and tracking system for use by training providers and local workforce development boards.
- Establishing ETPL eligibility criteria, and application and approval procedures.
- Facilitating the acquisition of performance data information for public institutions managed through a partnership with the New Mexico Department of Higher Education.
- Reviewing, monitoring and executing approval of training provider applications, for minimal eligibility criteria and performance requirements.
- Verifying the initial minimum eligibility of **out-of-state** program and training services; including review of applications or renewal; as well as the review of overall effectiveness of providers and programs to determine initial and continued eligibility based on ETP criteria.
- Notification to LWDBs when **out-of-state** programs and their providers are approved for utilization.

- Informing and supporting the appeals process for **out-of-state** training providers deemed ineligible as an Eligible Training Provider.
- Taking appropriate enforcement actions against providers and programs that intentionally provide inaccurate information or that substantially violate the requirements of WIOA.
- Disseminating the State ETPL along with performance and cost information for each provider, for use by the public and the local workforce development boards.
- Facilitating data matches between ETP records and Unemployment Insurance wage data to assist in providing a mechanism for ETP annual performance reporting and compliance with DOL performance guidance.
- Establishing a mechanism for adding Registered Apprenticeship programs to the ETPL and verifying registered status at least every two years.
- Convening WIOA Core Partners, Registered Apprenticeship and local workforce development boards as necessary to coordinate ETPL requirements.
- Establishing an appeals procedure for providers to appeal a denial of eligibility.

Local Workforce Development Boards are responsible for the following:

- Verifying the initial minimum eligibility of entities providing a program of training services.
- Reviewing **in-state** applications to recommend approval or renewal, the overall effectiveness of providers and programs to determine initial and continued eligibility based on ETP criteria.
- Notifying **in-state** providers/programs of determination, if approved or denied.
- Reviewing applications to recommend possible termination of ETPs due to the provider's submission of inaccurate eligibility and performance information or the provider's substantial violation of WIOA requirements.
- Reviewing training provider applications within 30 working days of the receipt of application.
- Working with the State to ensure there are sufficient numbers and types of providers of training services, including eligible providers with expertise in assisting individuals with disabilities and eligible providers with expertise in assisting adults in need of adult education and literacy activities.
- Ensuring the accessibility and use of the State ETPL and use of the programs through the local one-stop delivery system, ensuring the information is available to inform consumer choice.
- Identify in-demand sectors or occupations for the local area by using relevant labor market information.

- Ensuring priority consideration for programs of training that lead to recognized post-secondary credentials and are aligned with in-demand industry sectors or occupations in the local area.
- Recommending to the state, as necessary, removal of an eligible training provider from the ETPL with appropriate justification.
- Facilitating and supporting the appeals process for training providers deemed ineligible as an Eligible Training Provider.
- For the purposes of the statewide list, LWDBs may not require additional criteria and information from local providers; or set higher levels of performance than those required by the State criteria.
- Regarding Registered Apprenticeship programs, LWDBs may not require additional criteria and information from local providers to become or remain eligible in that local area; or set higher levels of performance than those required by the State as criteria for local programs to become or remain eligible to provide services in that local area.

Eligible Training Provider Process

Eligible Training Providers and programs that were eligible under WIA may remain eligible until June 30, 2017, unless otherwise notified. The State has established the following procedures for determining the initial eligibility of new providers, procedures for reviewing and renewing eligibility for all providers at least every two years, and procedures for transitioning existing WIA providers to WIOA.

Initial Eligibility Process

Training providers or programs may apply for initial eligibility at any time. All applications for the ETPL will be completed using the Workforce Connection On-Line System. The online application process for training providers starts with verifying the training provider is licensed, certified, or authorized by the New Mexico Department of Higher Education, or the relevant state agency or oversight agency, to operate training programs. If a provider is in compliance with the oversight agency, the provider can proceed to the next step in the application process. If a provider is not in compliance with the oversight agency, the provider will not be able to apply for inclusion on the ETPL until they meet the necessary requirements.

Once the online initial eligibility application is submitted by the service provider, the LWDB has 30 working days to review for completeness and submit a recommendation to the SAE for approval.

Initial Eligibility Criteria

Training providers or programs applying for initial eligibility must provide the following information through the online application:

- Describe each program of training services to be offered.
- Provide information on cost of attendance, including costs of tuition and fees.
- Identify type of industry-recognized certificate or credential, including recognized post-secondary credentials.
- Indication of whether the provider has developed the training in partnership with a business (and the name of the business).

- Information that addresses alignment of the training services with in-demand industry sectors and occupations.
- Outline of the prerequisites or skills and knowledge required prior to the commencement of training.
- Performance information for all students regardless of funding source, as detailed in Attachment 1.

1. To support this effort, the State will also work to acquire performance information already in existence at other state agencies. Training providers and programs that have not been in existence for at least two years will be required to provide available student and program data for the time period in existence.

Continued Eligibility Process

After the initial eligibility period of one year, training providers must be reviewed, updated and approved for continued eligibility every two (2) years. Applications for continued eligibility must show the training provider is still authorized by the appropriate oversight agency. Dropping off the list for a period of time does not return a provider to an initial eligibility status. All applications for continued eligibility must be completed using the Workforce Connection On-Line System.

Continued Eligibility Criteria

Training providers or programs applying for continued eligibility must adhere to the following criteria **in addition to the criteria listed under the Initial Eligibility Criteria section** of this policy.

- Total number of participants enrolled in the program.
- Total number of participants completing the program.
- Total number of participants exiting the program.
- Information regarding the completion rate of participants.
- Information on recognized post-secondary credentials received by program participants.
- Description of how the provider will ensure access to training services throughout the State, including rural areas and through the use of technology.
- Description of how the providers provide training services to individuals who are employed and/or individuals with barriers to employment.
- Information reported to State agencies on Federal and State training programs other than programs within WIOA title 1B, including partner programs, (i.e. Adult basic education and literacy, Division of Vocational Rehabilitation, etc.) that are used to provide additional information about overall effectiveness, quality and utilization of programs.

Performance Requirements

Beginning July 1, 2017, all Eligible Training Providers will be required to include the performance information, as detailed in Attachment 1, to remain eligible and obtain subsequent certification.

To support this effort, the State will also work to acquire performance information already in existence at other state agencies. Once training providers and their programs have two years of data for the WIOA performance indicators, the State will collect the required information, determine performance outcomes and make the performance data available through the NM Workforce Connection On-Line System, for each training provider on the ETPL. Programs with less than 10 students enrolled will not be included in performance data.

Conditions for Removal

Local boards may recommend for State removal or denial of an application, providers or programs, for a period of not less than 2 years, for the following reasons.

- If the provider knowingly supplies false performance information, misrepresents costs or services, or substantially violates requirements of WIOA law or regulations. Such providers are liable to repay all adult, dislocated worker and youth funds received during the period of non-compliance.
- If the provider fails to meet the established criteria. Situations that will result in removal include but are not limited to the following:
 - failure to meet established performance levels;
 - failure to provide all required performance information for continued eligibility; and
 - failure to maintain accreditation required for professional licensure.
- If the training provider or program is temporarily unable to meet the objectives of the approved program(s).

A training provider that is removed from the list for the reasons stated above may re-apply for continued eligibility when they can demonstrate that they meet all the requirements. Training providers debarred by the Federal government are not permitted to be placed or remain on the ETPL.

If a training provider or a program of training services is removed from the list while WIOA participants are enrolled, the participants may complete the program unless the provider or program has lost state licensing, certification, or authorization to operate by the appropriate state oversight agency.

Process for Removal from the ETPL

Local boards shall inform the State in writing of their request for removal of an eligible training provider/program and include the reason(s) for removal. The LWDB shall inform the training provider in writing; include the reason(s) for the removal; and provide information on the appeal process.

Appeals Process

Training providers can appeal the rejection of their program for inclusion on the ETPL or the subsequent termination of eligibility. An appeal must be submitted in writing via email to the Department of Workforce Solutions, State Administrative Entity within 14 days after notification of the decision to remove. The appeal must include the justification for the appeal. The training provider also has the right to request a hearing to discuss their appeal. An ETP appeals board

will be assembled by the State Administrative Entity. The appeals board will schedule a hearing and make a decision within 60 days of appeal. This will be a final decision.

Registered Apprenticeship and the ETPL

Under WIOA title I-B, Registered Apprenticeship program sponsors that *request* to be ETPs are automatically included on the list and will remain as long as the program is registered or until the program sponsor notifies the State that it no longer wants to be included on the list. 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 procedure to become a Registered Apprenticeship program sponsor with the United States Department of Labor or the State Apprenticeship Agency (SAA). All Registered Apprenticeship programs are eligible to be included on the State list of eligible training providers.

Registered Apprenticeship can take many forms and the sponsors are diverse, including:

- Employers who provide related instruction. A number of employers with Registered Apprenticeship programs provide formal in-house instruction as well as on-the-job training at the work site.
- Employers who use an outside educational provider. Under this model Registered Apprenticeship program sponsors do not provide the related instruction or educational portion of the apprenticeship, but rely upon an outside educational entity to deliver instruction. Employers can use two- or four-year post-secondary institutions, technical training schools, eligible providers of adult education and literacy activities under title II, or on-line courses for related instruction. The employer is the ETP and must identify their instructional provider as defined locally.
- Joint Apprenticeship Training Programs. These programs are made up of employers and unions. They have an apprenticeship training school where the instructional portion of the Registered Apprenticeship program is delivered. The training schools are usually administered by the union.
- Intermediaries. Intermediaries can serve as program sponsors when they take responsibility for the administration of the apprenticeship program. They can also provide expertise such as curriculum development, classroom instruction and supportive services, as appropriate. The intermediary is the ETP and must identify the instructional provider if an outside organization is providing the educational portion of the apprenticeship. Intermediaries include:
 - Educational institutions including two- and four-year post-secondary institutions, technical schools, or eligible providers of adult education and literacy activities under title II. In this model, the educational institution administers the program, works with employers to hire apprentices and provides classroom or on-line instruction for the apprenticeship program;
 - Industry associations administer the program and work with employer/members and educational entities to implement the apprenticeship program; and,

- Community based organizations administer the program and work with employers, educational entities and the community to implement the apprenticeship program.

Pre-apprenticeship programs do not have the same automatic ETP status under WIOA title I-B as do Registered Apprenticeship programs.

ETPL Procedures for Registered Apprenticeship Programs

Registered Apprenticeship program sponsors interested in being an ETP will be required to provide the following information to the State Apprenticeship Agency (SAA):

- Occupations included within the Registered Apprenticeship program;
- The name and address of the Registered Apprenticeship program sponsor;
- The name and address of the Related Technical Instruction provider, and the location of instruction if different from the program sponsor's address;
- The method and length of instruction; and,
- The number of active apprentices.

Registered Apprenticeship program sponsors that do not provide the Related Technical Instruction portion of the apprenticeship program may be required to provide additional information about their education provider, including the cost of the instruction.

The SAE will work with the (SAA) to verify the status of Registered Apprenticeship programs as part of the State's review of the State list of eligible training providers at least every two years.

Registered Apprenticeship programs may request removal from ETPL system. An RA program whose eligibility is terminated, for a period not less than 2 years, if they intentionally supplied inaccurate information, or substantially violated any provisions of WIOA law or regulation, is liable to repay all youth, adult, and dislocated worker training for non-compliance.

APPLICABILITY

Chief elected officials (CEOs), Local Workforce Development Boards (local boards), Local Workforce Administrative Entities (local administrative entities), WIOA Sub-recipients and Workforce System Partners.

INQUIRIES:

WIOA Manager 505-724-3629

ATTACHMENT 1

REQUIRED PERFORMANCE DATA

The following information is required for all applications for continued eligibility.

The percentage of program participants who are in unsubsidized employment during the second quarter after exit from the program.

The percentage of program participants who are in unsubsidized employment during the fourth quarter after exit from the program.

The median earnings of program participants who are in unsubsidized employment during the second quarter after exit from the program.

The percentage of program participants who obtain a recognized post-secondary credential, or a secondary school diploma or its recognized equivalent during participation in or within 1 year after exit from the program.