

VERMONT DEPARTMENT OF LABOR  
WIOA TRAINING PROVIDERS ELIGIBILITY  
PROCEDURES

Updated December 2018

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## Section 1: Purpose:

The Workforce Innovation and Opportunity Act (WIOA) section 122 requires States to approve a training provider's eligibility before WIOA funds can be used to pay for the provision of training services. The State, in consultation with the State Workforce Development Board (SWDB), is charged with developing the process for determining how training providers may qualify for inclusion on Vermont's Eligible Training Provider List (ETPL). The procedures outlined in this document will provide information on the eligible training provider application process. The ETPL will be made available to the SWDB, WIOA participants, and members of the public.

## Section 2: Qualifications:

To be eligible to receive funds for the provision of training services, a provider shall be one of the following:

- (1) An institution of higher education that provides a program that leads to a recognized post-secondary credential;
- (2) An entity that carries out programs registered with the Vermont Department of Labor, Apprenticeship Division; or
- (3) Another public or private provider of a program of training services, which may include joint labor-management organizations, and eligible providers of adult education and literacy activities under title II of WIOA if such activities are provided in combination with occupational skills training.

A "program of training services" is one or more courses or classes, or a structured regimen that leads to:

- (1) A recognized post-secondary credential<sup>1</sup>, secondary school diploma or its equivalent;
- (2) Employment; or
- (3) Measurable skill gains toward such a credential or employment.

## Section 3: Identification of Respective Roles:

The State of Vermont is designated as a single State local area and, therefore, the State Workforce Development Board operates as both the State and local workforce development board. The State has designated the Vermont Department of Labor (VDOL) to assist in carrying out the process and procedures for determining the eligibility of training providers. All applications for addition to the ETPL shall be submitted to the Vermont Department of Labor for approval. Training providers approved under these procedures shall be included on the ETPL. The VDOL shall notify the SWDB of any updates to the ETPL at each SWDB meeting.

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<sup>1</sup> WIOA § 3(52) defines 'recognized postsecondary credential' to include an associate or baccalaureate degree, an industry-recognized certificate or certification, a registered apprenticeship certificate, or a recognized State or Federal license.

#### Section 4: Initial Eligibility Procedures:

To be included on the Vermont ETPL, all training providers and programs, not previously eligible to provide training services, shall provide the required information to the VDOL. The VDOL shall review the application, make a determination of approval, and notify the applicant of the determination within 30 days of receiving the completed application. The VDOL shall notify the applicant of the final determination in writing, including, in the case of a denial, reasons for the final determination and a statement that the provider may appeal the decision as provided in these procedures. The applicant may appeal the determination of the VDOL using the appeals procedures outlined in section 10 of this document.

Applicants approved under this section will receive initial eligibility for one (1) fiscal year. If the applicant wishes to continue providing training services, the applicant shall apply for continued eligibility as provided in this document.

The following information is required for an initial eligibility determination:

- 1) A completed application<sup>2</sup>;
- 2) A copy of the provider's refund, equal employment opportunity and accessibility policies;
- 3) A current class schedule; and
- 4) Any additional information requested by the VDOL.

An initial eligibility determination will be decided for each training provider on a **program by program** basis and be based on the following criteria:

- A training provider's prior eligibility status or status of existing programs.
- The ability of the training provider to meet minimum performance levels based on the State Plan's performance measures required by the U.S. Department of Labor.
- Compliance with Vermont labor laws, such as workers' compensation, unemployment insurance, wage and hour, and nondiscrimination.
- The degree to which the program relates to in-demand industry sectors and occupations in the State.

#### Section 5: Continued Eligibility Procedures:

All training providers shall annually apply to remain on the ETPL by submitting a completed application along with the required information. The VDOL shall review the application, make a determination of approval, and notify the applicant of the determination within 30 days of receiving the completed application. The VDOL shall notify the applicant of the final determination in writing, including, in the case of a denial, reasons for the final determination and a statement that the provider may appeal the decision as provided in these procedures. The applicant may appeal the determination of the VDOL using

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<sup>2</sup>In regards to the application, an initial training provider should provide any accurate information related to the requested performance measures and certify to the VDOL the ability to meet the minimum performance levels and accurately submit the required information.

the appeals procedures outlined in section 10 of this document. Any training provider that does not apply to remain shall be removed from the ETPL.

The following information is required for a continued eligibility determination:

- 1) A completed application;
- 2) Performance Reports for the past two years, as applicable; and
- 3) Certification that the following have not changed from previous years: the provider's refund, equal employment opportunity and accessibility policies, and the class schedule. If changes have occurred new copies shall be provided.
- 4) Any additional information requested by the VDOL.

A continued eligibility determination will be decided for each training provider on a **program by program** basis and be based on the following criteria:

- A training provider's prior eligibility status or status of existing programs.
- The performance of training providers on the performance accountability measures relating to the State Plan and the training provider's individual performance measures established by the VDOL.
- The availability of training services throughout the State.
- Information reported to State Agencies with respect to Federal and State programs involving training services, including the adult education and vocational rehabilitation programs.
- The degree to which the program relates to in-demand industry sectors and occupations in the State.
- Compliance with State licensing requirements, where applicable.
- The ability of the training provider to offer quality programs that lead to post-secondary credentials.
- The ability of the training provider to provide training services to individuals who are unemployed, underemployed, incumbent workers and individuals with barriers to employment.
- Demonstrated ability of the training provider to submit timely and accurate performance reports.
- Continued compliance with Vermont labor laws, such as workers' compensation, unemployment insurance, wage and hour, and nondiscrimination.
- A training provider's ability to meet the State Plan's performance measures required by the U.S. Department of Labor.

#### Section 6: Registered Apprenticeship Programs:

Pursuant to section 122(a)(3) of WIOA, apprenticeship programs registered with the Vermont Department of Labor, Apprenticeship Division are automatically eligible to be included on the ETPL. Sponsors will be notified of their eligibility when they become recognized and offered an opportunity to decline being listed. Absent an affirmative response indicating that they do not wish to be listed, the program will be added to the list within 30 days of recognition.

Registered apprenticeship programs are not required to submit initial or continued eligibility applications under these procedures. Once an apprenticeship program is registered on the ETPL, the program will remain on the ETPL until the program is no longer registered with the Vermont Department of Labor or until the provider notifies the Apprenticeship Division, in writing, of the intention to be removed from the list.

Pursuant to section 122(a)(3) of WIOA and 20 C.F.R. § 677.230(b), registered apprenticeship programs are not required to do either of the following: submit performance information in order to be included on the ETPL; or comply with the ETP performance report required by section 116(d)(4) of WIOA. However, a registered apprenticeship program may voluntarily submit performance information to the Vermont Department of Labor, in which case the Department must include this information on the ETPL.

Section 7: On-the-Job Training, Customized Training, Incumbent Worker Training, and Other Training Exceptions:

Pursuant to section 122(h) of the WIOA, providers of on-the-job training, customized training, incumbent worker training, internships, paid or unpaid work experience opportunities, or transitional employment, as those terms are defined in WIOA, are not subject to the procedural requirements outlined in this document. Providers of these programs should consult with the VDOL, Workforce Development Division about the process to be identified as eligible providers of training services. If eligible, these programs shall submit such performance information and meet performance criteria as determined by the VDOL.

Section 8: Additional Requirements:

Eligible Training Providers are subject to applicable requirements in the WIOA as well as any applicable Federal and State laws and regulations, including the requirement to submit performance reports as required by WIOA section 116(d)(4).

Section 9: Enforcement:

Upon a determination by the VDOL that a training provider, or individual providing information on behalf of the provider, intentionally supplied inaccurate information or substantially violated any requirements of WIOA, any VDOL rule or regulation, or any State or Federal labor law, eligibility shall be terminated for a period of not less than 2 years. A training provider whose eligibility is terminated under this section shall be liable for the repayment of funds received during the period of violation. This section is construed to provide remedies and penalties that supplement, but shall not supplant, any additional civil and criminal remedies and penalties.

The VDOL shall notify a training provider in writing when the Department opens an investigation under this section. The notification shall include a brief description of the nature of the investigation and a reference to the applicable laws and rules, including these procedures.

The VDOL shall notify a training provider in writing upon a final determination of an investigation under this section. The notification shall include a detailed description of the investigation, reasons for the final determination, a reference to the applicable laws and rules, including these procedures, any penalties, including eligibility status and repayment amounts, and a statement that the provider may appeal the determination as provided in this document.

Any training provider determined to violate this section may appeal the determination of the VDOL as provided in section 10 of this document.

#### Section 10: Appeals:

Within 15 calendar days after receipt of a denial or termination of eligibility, a training provider may file a written request to receive an appeal by a formal hearing. The VDOL Commissioner will appoint a Hearing Officer (HO), or similar entity, to oversee any complaint hearing, and will ensure that the HO has the qualifications, skills, and abilities to fairly, accurately, and without bias, assess the information and determine the facts. A hearing shall be scheduled on a date and time mutually acceptable to the parties, but no later than 30 days after receiving the written request for a hearing. The hearing shall include an opportunity for the applicant to submit written and verbal information to the presiding HO. The hearing shall be conducted in a fair and impartial manner. The Hearing Officer shall issue a decision within 60 calendar days from the date of the hearing informing both parties (the complainant and respondent) of the decision. The decision of the HO or presiding entity shall be final.

#### Section 11: Waiver from Additional Information Request:

If the VDOL requests additional information as part of the application, other than what is required by the WIOA or applicable regulations, a training provider may request, in writing to the VDOL Commissioner, a waiver from the additional information request. To be granted a waiver, a training provider must be able to demonstrate that providing the information would be unduly burdensome or costly. If the Commissioner determines that the provider has demonstrated such extraordinary costs or undue burden, the VDOL shall provide access to cost-effective methods for the collection of information. Nothing in this section permits a training provider to request a waiver from any required information.

#### Section 12: Out-of-State Providers:

An out-of-state training provider wishing to provide training services within the State of Vermont shall comply with the procedures outlined in this document. Any out-of-state training provider wishing to offer Vermont WIOA participants training services outside of Vermont should contact the VDOL, Workforce Development Division for further information.

