

## **CHAPTER 800. GENERAL ADMINISTRATION**

**ADOPTED RULES TO BE PUBLISHED IN THE *TEXAS REGISTER*. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE OFFICE OF SECRETARY OF STATE.**

**ON FEBRUARY 6, 2024, THE TEXAS WORKFORCE COMMISSION ADOPTED THE RULES BELOW WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.**

Publication Date of the Adoption in the *Texas Register*: **February 23, 2024**

The Rules are Effective: **February 26, 2024**

The Texas Workforce Commission (TWC) adopts amendments to the following sections of Chapter 800, relating to General Administration:

Subchapter B. Allocations, §800.68

Subchapter L. Workforce Diploma Pilot Program, §800.501

TWC adopts the following new section to Chapter 800, relating to General Administration:

Subchapter B. Allocations, §800.69

Amended §§800.68, 800.501 and new 800.69 are adopted *without changes* to the proposal, as published in the November 24, 2023, issue of the *Texas Register* (48 TexReg 6871), and, therefore, the adopted rule text will not be published.

### **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

The amendments to Chapter 800 create new §800.69, Integrated English Literacy and Civics Education Program, which outlines how funds appropriated to the state under Workforce Innovation and Opportunity Act (WIOA), §243, Integrated English Literacy and Civics Education (IELCE), will be allocated through a statewide competition.

The amendments incorporate into rule the requirements of House Bill (HB) 1602 and HB 2575, as passed by the 88th Texas Legislature, Regular Session (2023).

HB 1602 requires TWC to establish rules to develop performance criteria for the prioritization for the continuous award of grant funds. As such, TWC is adopting revisions to Subchapter B. Allocations, §800.68(a).

HB 2575 requires revisions to the definition of "qualified providers" in Subchapter L, Workforce Diploma Pilot Program, §800.501(12).

### **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

## **SUBCHAPTER B. ALLOCATIONS**

TWC adopts the following amendments to Subchapter B:

### **§800.68. Adult Education and Literacy**

Section 800.68 outlines how the state allocates General Revenue funds as well as WIOA, Title II, Temporary Assistance for Needy Families (TANF) funds to support the Adult Education and Literacy (AEL) program in Texas. Added to §800.68(a) are the HB 1602 requirements relating to priority of awarding grant funds based on performance criteria comparable to Texas Labor Code §315.007. TWC also proposes removing §800.68(d) and placing it in new section, §800.69.

### **§800.69. Integrated English Literacy and Civics Education Program**

New §800.69 sets forth the state's allocation methodology that allows eligible applicants to demonstrate a need for funds to provide IELCE program activities to eligible adult learners across the state.

## **SUBCHAPTER L. WORKFORCE DIPLOMA PILOT PROGRAM**

TWC adopts the following amendments to Subchapter L:

### **§800.501. Definitions**

Section 800.501 is amended to update the definition of "qualified provider" to align with Texas Labor Code §317.004(2)(B), as amended by HB 2575.

TWC hereby certifies that the rules have been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

## **PART III. PUBLIC COMMENTS**

The public comment period closed on December 25, 2023. No comments were received.

## **PART IV. STATUTORY AUTHORITY**

The rules are adopted under the following statutory authority:

--Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities; and

--Texas Labor Code Chapter 317, enacted by Senate Bill 1055, 86th Texas Legislature, Regular Session (2019), which required TWC to establish and administer the Workforce Diploma Pilot Program.

Additionally, HB 1602, 88th Texas Legislature, Regular Session (2023), added Texas Labor Code §315.002(b-1), which requires TWC to establish rules developing annual performance criteria for prioritizing the awarding of grant funds.

The adopted rules implement Title 4, Texas Labor Code, particularly Chapter 315.

## CHAPTER 800. GENERAL ADMINISTRATION

### SUBCHAPTER B. ALLOCATIONS

#### §800.68. Adult Education and Literacy.

- (a) AEL funds available to the Commission to provide services under the federal Adult Education and Family Literacy Act (AEFLA), WIOA Title II, together with associated state general revenue matching funds and federal TANF funds--together with any state general revenue funds appropriated as TANF maintenance-of-effort--will be used by the Commission, as set forth in subsections (b) - (d) of this section. Prior to any grant recipient receiving notice of an award, the Commission shall review and approve the award of grant funds to be issued under this program. The Commission shall give priority in awarding funds to entities that consistently satisfy annual performance requirements comparable to subsection (e) of this section.
- (b) At least 82.5 percent of the federal funds constituting the total state award of AEFLA state grants--including amounts allotted to the eligible agency having a state plan, as provided by AEFLA §211(c)--will be allocated by the Commission to the workforce areas. From the amount allotted to the eligible agency having a state plan, as provided by AEFLA §211(c), the Commission will allocate amounts to the workforce areas according to the established federal formula, as follows:
  - (1) 100 percent will be based on:
    - (A) the relative proportion of individuals residing within each workforce area who are at least 18 years of age, do not have a secondary school diploma or its recognized equivalent, and are not enrolled in secondary school, during the most recent period for which statistics are available;
    - (B) an equal base amount; and
    - (C) the application of a hold-harmless/stop-gain procedure.
  - (2) No more than 5 percent of the funds expended as part of this workforce area allocation shall be used for administrative costs, as defined by AEFLA, provided, however, that the Special Rule outlined in AEFLA §233(b) shall apply with effective justification, as appropriate.
  - (3) No more than 10 percent of this allocation shall be available for expenditure within each workforce area on the basis of the achievement of performance benchmarks, as set forth in subsection (e) of this section.
- (c) At least 80 percent of the state general revenue matching funds associated with the allotment of federal funds to the eligible agency having a state plan, as provided by

AEFLA §211(c), will be allocated by the Commission to the workforce areas according to the established federal formula, as follows:

- (1) 100 percent will be based on:
    - (A) the relative proportion of individuals residing within each workforce area who are at least 18 years of age, do not have a secondary school diploma or its recognized equivalent, and are not enrolled in secondary school, during the most recent period for which statistics are available;
    - (B) an equal base amount; and
    - (C) the application of a hold-harmless/stop-gain procedure.
  - (2) No more than 15 percent of the funds expended as part of this workforce area allocation shall be used for administrative costs, as defined by Commission policy.
  - (3) No more than 10 percent of this allocation shall be available for expenditure within each workforce area on the basis of the achievement of performance benchmarks, as set forth in subsection (e) of this section.
- (d) At least 80 percent of federal TANF funds associated with the AEL program--together with any state general revenue funds appropriated as TANF maintenance-of-effort--will be allocated by the Commission to the workforce areas according to a need-based formula, as follows:
- (1) 100 percent will be based on:
    - (A) the relative proportion of the unduplicated number of TANF adult recipients with educational attainment of less than a secondary diploma during the most recently completed calendar year;
    - (B) an equal base amount; and
    - (C) the application of a hold-harmless/stop-gain procedure.
  - (2) No more than 15 percent of the funds expended as part of this workforce area allocation shall be used for administrative costs, as defined by federal regulations and Commission policy.
  - (3) No more than 10 percent of this allocation shall be available for expenditure within each workforce area on the basis of the achievement of performance benchmarks, as set forth in subsection (e) of this section.

- (e) AEL performance accountability benchmarks shall be established to coincide with performance measures and reports, or other periods, as determined by the Commission. Levels of performance shall, at a minimum, be expressed in an objective, quantifiable, and measurable form, and show continuous improvement.
- (f) Performance accountability benchmarks shall:
  - (1) include measures for high school equivalency program or ability-to-benefit program enrollment and achievement, as outlined in paragraph (2) of this subsection. A postsecondary ability-to-benefit program, as outlined in paragraphs (2) and (3) of this subsection, is a postsecondary education or training program that:
    - (A) results in a recognized postsecondary credential; and
    - (B) enrolls AEL eligible participants who:
      - (i) do not have a high school diploma or recognized equivalency;
      - (ii) qualify for federal student financial aid eligibility under the federal Ability-to-Benefit provisions enacted in §484(d) of the Higher Education Act of 1965; and
      - (iii) demonstrate on an assessment instrument that the participant can pass college-level courses with some support;
  - (2) include measures that require:
    - (A) at least 25 percent of all participants served in the program year to be enrolled in a high school equivalency or postsecondary ability-to-benefit program; and
    - (B) at least 70 percent of participants who were in a high school equivalency or postsecondary ability-to-benefit program during the program year and exited during the program year to achieve either a high school equivalency or a recognized postsecondary credential; and
  - (3) be approved by the Commission each program year for milestones toward meeting high school equivalency program or postsecondary ability-to-benefit program enrollment and achievement as outlined in paragraph (2) of this subsection.

**§800.69. Integrated English Literacy and Civics Education Program.**

- (a) At least 82.5 percent of the AEFLA §243 Integrated English Literacy and Civics Education federal award allocated to the state must be awarded to entities with demonstrated effectiveness as determined through a statewide competitive procurement, as follows:
  - (1) 100 percent of the award will be based on the demonstrated need cited and supported with data by the eligible applicant as part of a statewide procurement;
  - (2) No more than 5 percent of the funds expended as part of the total allocation shall be used for administrative costs, as defined by AEFLA, provided, however, that the Special Rule outlined in AEFLA §233(b) shall apply with effective justification, as appropriate;
  - (3) No more than 10 percent of this allocation shall be available for expenditure on the basis of the achievement of performance benchmarks, as set forth in §800.68(e); and
  - (4) The application of a hold-harmless/stop gain procedure.
- (b) The Commission shall give priority in awarding funds to entities that consistently satisfy annual performance requirements comparable to §800.68(f) of this subchapter.

**SUBCHAPTER L. WORKFORCE DIPLOMA PILOT PROGRAM**

**§800.501. Definitions.**

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

- (1) Academic resiliency--A student's ability to persist and to academically succeed despite adversity.
- (2) Academic skill intake assessment--A formal and/or informal assessment used at intake to gather information on a student's current knowledge and skills in specific academic areas (for example, literacy and numeracy). That information is then used to determine the student's appropriate instructional level as well as accommodations and/or remediation that the student needs.
- (3) Career Pathway--A combination of rigorous and high-quality education, training, and other services that:
  - (A) aligns with the skill needs of industries in the economy of the state or regional economy involved;

- (B) prepares an individual to be successful in any of a full range of secondary or postsecondary education options;
  - (C) includes counseling to support an individual in achieving the individual's education and career goals;
  - (D) includes, as appropriate, education offered concurrently with, and in the same context as, workforce preparation activities and training for a specific occupation or occupational cluster;
  - (E) organizes education, training, and other services to meet the particular needs of an individual in a manner that accelerates the educational and career advancement of the individual to the extent practicable;
  - (F) enables an individual to attain a secondary school diploma or its recognized equivalent, and at least one recognized postsecondary credential; and
  - (G) helps an individual enter or advance within a specific occupation or occupational cluster (29 USC §3102, Definitions).
- (4) Eligible participant--An individual who is over the age of compulsory school attendance, as prescribed by Texas Education Code, §25.085, and as required by the Agency, must:
- (A) be a Texas resident;
  - (B) lack a high school diploma;
  - (C) be authorized to work in the United States; and
  - (D) be able to work immediately upon graduation from the program.
- (5) Employability skills certification program--Refers to a certification in general skills that are necessary for success in the labor market at all employment levels and in all industry sectors. Employability skills include problem-solving, collaboration, organization, and adaptability.
- (6) Half credit--The standard award of credit given for a course that lasts one semester, and which is based on the Carnegie Unit. When determining credits, qualified providers should consider instructional time plus the amount of time that the student would take to complete the coursework in a high school semester or academic year. In traditional education models, a student typically attends a class for 55 to 60 minutes a day for four or five days a week in addition to studying independently.

- (7) High school diploma--A credential awarded by an entity, based on completion of all state graduation requirements as outlined in Texas Education Code, §28.025 and §39.023 and 19 TAC Chapter 74 (relating to Curriculum Requirements) and Chapter 101 (relating to Assessment).
- (8) Industry-recognized credential--A state-approved credential verifying an individual's qualifications and competence and is issued by a third party with the relevant authority to issue such credentials (US Department of Labor, 2010). Industry-recognized credentials offered by qualified providers must align with the Agency's mission to target high-growth, high-demand, and emerging occupations that are crucial to the state and local workforce economies, and must reflect the target occupations for the workforce areas in which services will be provided. Qualified providers may also reference the list of industry-based certifications for public school accountability published by the Texas Education Agency.
- (9) Learning Plan Development--The process by which an individualized learning plan is developed after student intake; it is maintained through coaching and mentoring.
- (10) One credit--The standard award credit given for a course that lasts a full academic year, and which is based on the Carnegie Unit. When determining credits, qualified providers should consider instructional time plus the amount of time that the student would take to complete the coursework in a high school semester or academic year. In traditional education models, a student typically attends a class for 55 to 60 minutes a day for four or five days a week, in addition to studying independently.
- (11) Program--Refers to the Workforce Diploma Pilot Program, set forth in Texas Labor Code, Chapter 317.
- (12) Qualified provider--A provider that may participate in the Program and receive reimbursement and that:
  - (A) is a public, nonprofit, or private entity that is:
    - (i) authorized under the Texas Education Code or other state law to grant a high school diploma; or
    - (ii) accredited by a regional accrediting body, as established by the US Secretary of Education, pursuant to 20 USCS §1099b, Recognition of Accrediting Agency or Association and working in partnership with an entity described by clause (i) of this subparagraph;
  - (B) has at least two years of experience providing dropout reengagement services to adult students, including recruitment, learning plan



development, and proactive coaching and mentoring, leading to the obtainment of a high school diploma;

- (C) is equipped to:
    - (i) provide:
      - (I) academic skill intake assessment and transcript evaluations;
      - (II) remediation coursework in literacy and numeracy;
      - (III) a research-validated academic resiliency assessment and intervention;
      - (IV) employability skills development aligned to employer needs;
      - (V) career pathways coursework;
      - (VI) preparation for the attainment of industry-recognized credentials; and
      - (VII) career placement services; and
    - (ii) develop a learning plan that integrates academic requirements and career goals; and
  - (D) offers a course catalog that includes all courses necessary to meet high school graduation requirements in Texas, as authorized under 19 TAC Chapter 74, Subchapter B (relating to Graduation Requirements).
- (13) Regional accrediting body--Must meet the criteria established by the US Secretary of Education pursuant to 20 USCS §1099b, Recognition of Accrediting Agency or Association, and appear on the US Secretary of Education's list of federally recognized accrediting agencies in the *Federal Register*, as stated in 34 CFR §602.2. A copy of the list may be obtained from the US Department of Education.