

1 **CHAPTER 809. CHILD CARE AND DEVELOPMENT**

2  
3 **PROPOSED RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS***  
4 ***REGISTER*. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS**  
5 **SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE *TEXAS REGISTER*.**  
6

7 The Texas Workforce Commission (Commission) proposes amendments to the following section  
8 of Chapter 809 related to Child Care and Development:  
9

10 Subchapter B. General Management Requirements, §809.20

- 11  
12 PART I. PURPOSE, BACKGROUND, AND AUTHORITY  
13 PART II. EXPLANATION OF INDIVIDUAL PROVISIONS  
14 PART III. IMPACT STATEMENTS  
15 PART IV. COORDINATION ACTIVITIES  
16

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

18  
19 The Commission proposes to amend 40 TAC §809.20 relating to leveraging local resources for  
20 use as match for federal Child Care and Development Funds (CCDF). The purpose of the  
21 proposed amendments is to clarify requirements that private donations, public transfers of funds,  
22 and certification of public expenditures must meet in order to be used as match for CCDF.  
23 Additionally, the proposed amendments clarify that it is the responsibility of the Commission,  
24 rather than the Boards, to accept and certify donations from private entities.  
25

26 The Social Security Act (42 U.S.C. 618) provides the federal requirements for states to secure  
27 federal matching funds for child care services. Child Care and Development Fund Final Rules,  
28 45 C.F.R. §98.53 further delineates the matching fund provisions by requiring that the funds used  
29 as match be for allowable services or activities as described in the CCDF State Plan.  
30 Additionally, 45 C.F.R. §98.53 allows states to use funds from both public and private sources in  
31 order to secure federal matching funds. However, the federal regulations place different  
32 requirements on these two sources of funds in order for the funds to be used as match for CCDF.  
33

34 Regulations in 45 C.F.R. §98.53(e)(1) specify that public funds used as CCDF match must be:  
35 --appropriated directly to the Lead Agency, or  
36 --transferred from another public agency to the Lead Agency and under its administrative  
37 control; or  
38 --certified by the contributing public agency as representing expenditures on CCDF allowable  
39 activities eligible for federal match.  
40

41 In addition, the regulations specify that public funds must:  
42 --not be used to match other federal funds; and  
43 --not be federal funds, or are federal funds authorized by federal law to be used to match other  
44 federal funds.  
45

1 Regulations in 45 C.F.R. §98.53(e)(2) specify that the use of private funds as CCDF match  
2 must:

- 3 --be donated from private sources;
- 4 --be donated without restrictions that would require their use for a specific individual,  
5 organization, facility, or institution;
- 6 --not revert to the donor's use or facility; and
- 7 --not be used to match other federal funds.

8  
9 In Fiscal Year 2004, the Commission authorized Local Workforce Development Boards (Boards)  
10 to secure local match by certifying expenditures on allowable CCDF activities from private  
11 sources. Additionally, in January 2004, the Commission amended §809.20 of its Child Care and  
12 Development rules to allow for the use of certified expenditures from private sources.

13  
14 In written guidance to the Texas Workforce Commission issued June 2, 2005, the United States  
15 Department of Health and Human Services, Administration for Children and Families (ACF),  
16 determined that the state's rules promulgated on January 23, 2004, relating to the child care  
17 program [40 TAC §809.20(a)(1)(B)] do not comport with CCDF regulations at 45 C.F.R.  
18 §98.53(e) and (f). ACF further stated that in order for private donated funds to be considered for  
19 federal match, such funds must be donated to the Commission as the Lead Agency for CCDF  
20 and are subject to its administrative control. Private donated funds remaining in the hands of  
21 private organizations or under the administrative control of those organizations cannot be  
22 considered "donated" for purposes of CCDF matching requirements.

23  
24 The proposed amendments to Chapter 809 clarify that the only allowable sources of local match  
25 are:

- 26 --funds donated from a private entity to the Commission;
- 27 --funds transferred from a public entity to the Commission; or
- 28 --public expenditures on allowable CCDF activities certified by a public entity as expenditures  
29 eligible for federal match.

30  
31 Further, the proposed amendments clarify that the local matching funds must be for activities  
32 that are included in the CCDF State Plan and allowable under this chapter.

33  
34 Additionally, the proposed amendments clearly distinguish between the Boards' responsibility  
35 for securing and managing local matching funds and the Boards' responsibility for providing  
36 necessary information to the Commission in order for the Commission to receive and certify  
37 private donations, and accept certifications of public expenditures and public transfers of funds.

## 38 39 40 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

41  
42 **(Note: Minor editorial changes are made throughout Chapter 809 that do not change the**  
43 **meaning of the rules and, therefore, are not discussed in the Explanation of Individual**  
44 **Provisions.)**

## 45 46 47 **SUBCHAPTER B. GENERAL MANAGEMENT REQUIREMENTS**

1  
2 **§809.20. Leveraging Local Resources**  
3

4 The Commission proposes to amend §809.20(a) to emphasize that it is the Boards' responsibility  
5 to leverage federal matching funds by securing available local resources. The proposed  
6 amendment to §809.20(a) will move the types of local funds that are allowable as match from the  
7 current §809.20(a) to a new §809.20(b). The purpose of this amendment is to clarify the roles  
8 and responsibilities regarding securing and accepting local match. Proposed §809.20(a) states  
9 that it is the Boards' responsibility to secure local match, while proposed §809.20(b) provides  
10 that it is the Commission's role to accept the local match funds.

11  
12 Additionally, the Commission proposes to remove the provision, currently in §809.20(a)(1)(B),  
13 relating to the certification of private expenditures by a private entity as an allowable source of  
14 local match. The elimination of this language implements the guidance the Commission  
15 received from ACF clarifying the meaning of 45 C.F.R. §98.53(e)(2), by no longer allowing  
16 private certification of expenditures as a source of local match.

17  
18 Proposed new §809.20(b) describes the types of local funds that the Commission may accept as  
19 match for federal child care funds. The section provides that the Commission may accept private  
20 donated funds, public transferred funds, and public certifications of expenditures.

21  
22 Proposed §809.20(b)(1) provides the requirements that must be met for the Commission to  
23 accept donations of funds from private entities. The proposed §809.20(b)(1) reflects the  
24 requirements under CCDF as specified in the Social Security Act and further delineated in the  
25 federal regulations in 45 C.F.R. §98.53(e). Proposed §809.20(b)(1) states that private donated  
26 funds must:

- 27 --be donated without restrictions that would require their use for a specific individual,  
28 organization, facility, or institution, or for an activity not included in the CCDF State Plan or  
29 allowed under this chapter;  
30 --not revert to the donor's facility or use;  
31 --not be used to match other federal funds; and  
32 --be certified by both the donor and the Commission as meeting the foregoing requirements.  
33

34 Proposed §809.20(b)(2) specifies the requirements for transfers of funds from public entities and  
35 emulates federal regulations in 45 C.F.R. §98.53(e)(1). The proposed language allows the  
36 Commission to accept the transfer of public funds as a source of local match when the public  
37 funds are:

- 38 --transferred without restrictions that would require their use for an activity not included in the  
39 CCDF State Plan or allowed under this chapter;  
40 --not used to match other federal funds; and  
41 --not federal funds or are federal funds authorized by federal law to be used to match other  
42 federal funds.  
43

44 Proposed §809.20(b)(3) sets forth the requirements for the Commission to accept the  
45 certifications of expenditures from public entities. Proposed §809.20(b)(3), which emulates

1 federal regulations in 45 C.F.R. §98.53(e)(1), states that expenditures by a public entity may be  
2 eligible for federal matching funds when the public entity certifies that the expenditures are:  
3 --for activities included in the CCDF State Plan or allowed under this chapter;  
4 --not used to match other federal funds; and  
5 --not federal funds, or are federal funds authorized by federal law to be used to match other  
6 federal funds.

7  
8 The Commission proposes to renumber current §809.20(b)(1) as §809.20(c)(1) and to modify  
9 language to clarify Boards' responsibilities with regard to securing local funds in order to receive  
10 federal matching funds in their local workforce development areas (workforce areas). Those  
11 responsibilities include the identification of available local funds, securing those funds, and the  
12 completion of agreements. Boards have the responsibility to identify available local funds  
13 through the use of private donated funds, transfers of funds by public entities, and certification of  
14 expenditures by public entities. Boards have further responsibility to secure those identified  
15 local funds by obtaining an agreement with the identified contributor and submitting those  
16 agreements to the Commission for acceptance by the Commission. Finally, Boards have the  
17 responsibility to ensure that the agreements are completed and fulfilled in accordance with the  
18 terms specified in the agreement.

19  
20 The Commission also proposes to renumber §809.20(b)(2) as §809.20(c)(2) and modify  
21 language to state that Boards are encouraged to secure additional local funds that exceed the  
22 amount required to match federal funds allocated to the Board to maximize its potential to  
23 receive additional federal funds--should they become available--rather than requiring the Board  
24 to secure additional local funds. The current language implies that the Boards are required to  
25 secure more local matching funds than are actually needed to draw down the federal funds  
26 allocated to the Boards. The Commission recognizes that requiring Boards to secure additional  
27 local match could lead to a situation in which a Board cannot assure contributors that there will  
28 be available federal matching dollars to match their donation. This amendment reflects the  
29 Commission's intent to encourage Boards to secure extra local matching funds in case pledges  
30 are not completed in full, or to position Boards to be able to utilize reallocated additional federal  
31 matching funds should they become available.

32  
33 Further, the Commission proposes to move the current language in §809.20(a)(2), which states  
34 that a Board's performance in securing local funds may make the Board eligible for incentive  
35 awards, to §809.20(c)(3). The Commission proposes this change in order to place the provisions  
36 related to the Board responsibilities regarding the securing of local resources into §809.20(c).

37  
38 The Commission proposes to remove §809.20(c) that sets forth the process of submitting and  
39 documenting local match agreements. Administrative processes are more appropriate in other  
40 documents such as Workforce Development Letters or contract start-up instructions. In  
41 conjunction with removing the specific procedures for submitting and documenting local match  
42 agreements, the Commission also adds language in §809.20(d) to specify that a Board shall  
43 submit private donations, public transfers, and public certifications to the Commission for  
44 acceptance, with sufficient information to determine that the funds meet the necessary  
45 requirements.

1 The Commission proposes to amend §809.20(e), regarding completing private donations, public  
2 transfers, and public certifications, to specify the three types of sources for local match.  
3 The Commission proposes to remove current §809.20(f), regarding Board reporting requirements  
4 related to local match. The Board local match reporting requirements are stipulated in proposed  
5 §809.20(c) regarding the submission of local match agreements, and proposed §809.20(d)  
6 regarding the completion of local match agreements. Further, Boards are required to submit  
7 monthly expenditure reports, including expenditures related to child care local match  
8 agreements, in accordance with §800.72 of this title, relating to Reporting Requirements.

9  
10 Further, the Commission proposes to renumber current §809.20(g) as §809.20(f), and clarifies  
11 the types of local match that Boards must monitor.

### 12 13 **PART III. IMPACT STATEMENTS**

14  
15 Randy Townsend, Chief Financial Officer, has determined that for each year of the first five  
16 years the rules will be in effect, the following statements will apply:

17  
18 There are no additional estimated costs to the state and to local governments expected as a result  
19 of enforcing or administering the rules. There are no estimated reductions in costs to the state  
20 and to local governments as a result of enforcing or administering the rules.

21  
22 Mr. Townsend has determined that there are no foreseeable implications relating to costs of the  
23 state or local governments as a result of enforcing or administering the rules however, and he  
24 estimates the possible loss to local governments (workforce boards, on behalf of their workforce  
25 areas) of revenue, which is utilized to satisfy their local federal child care matching targets.  
26 Based on the experience during FY 2002 and FY 2003 (during which time certification of  
27 eligible expenditures by private entities as a method for securing local child care match was not  
28 allowed under TWC rules) and FY 2004 and FY 2005 (during which time certification of  
29 eligible expenditures by private entities as a method for securing local child care match was  
30 allowed by TWC rules), estimates that for each year during the first five years the rule will be in  
31 effect, \$2,559,565 less in local child care match may be achieved. In turn, this corresponds to  
32 \$4,933,376 less in federal CCDF matching funds expended each year. This would represent an  
33 11.5 percent reduction in local match achieved and an 11.5 percent reduction in federal child  
34 care matching funds contingent on meeting local match targets expended.

35  
36 Mr. Townsend has determined that enforcing or administering the rule does not have foreseeable  
37 implications relating to the cost of the state or local governments; however, that there may be  
38 foreseeable implications to the revenues of local governments (i.e., workforce boards, on behalf  
39 of workforce areas), as noted above. There are no foreseeable implications to the revenues of the  
40 state, as the Texas Workforce Commission will act to maximize all federal CCDF matching  
41 funds available to the state in each grant year available.

42  
43 Mr. Townsend has determined that there are no anticipated economic costs to persons required to  
44 comply with the rules.

1 Mr. Townsend has also determined that there is no anticipated adverse economic impact on small  
2 or microbusinesses as a result of enforcing or administering these rules because they are not  
3 regulated by this rule.

4  
5 Mark Hughes, Director, Labor Market Information, has determined that there is no significant  
6 negative impact upon employment conditions in this state as a result of the proposed rules. Mr.  
7 Hughes does not expect any significant impact upon overall employment conditions in the state  
8 as a result of the proposed rules.

9  
10 Luis M. Macias, Director, Workforce Development Division, has determined that for each year  
11 of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing  
12 the proposed rules will be to ensure that local match funds for child care are secured in a manner  
13 consistent with federal guidance in order for the state to receive its full federal allocation from  
14 the Child Care and Development Fund and provide necessary child care services for low-income  
15 working families.

#### 16 17 **PART IV. COORDINATION ACTIVITIES**

18  
19 In the development of these rules for publication and public comment, the Commission sought  
20 the involvement of Texas' 28 Boards and the Texas Association of Workforce Boards (TAWB).  
21 The Commission provided the concept papers regarding these rule amendments to the Boards  
22 and TAWB for consideration and review. The Commission also conducted conference calls with  
23 Board executive directors and Board staff on June 10, 2005, and August 5, 2005, to discuss the  
24 concept papers. Additionally, during the June 14, 2005, Commission meeting, a representative  
25 of TAWB and a representative of the Executive Directors' Council provided input to the  
26 Commission regarding the impact of this rule change. During the rulemaking process, the  
27 Commission considered all information gathered in order to develop rules that provide clear and  
28 concise direction to all parties involved.

29  
30 Comments on the proposal may be submitted to TWC Rules Comments, Policy and  
31 Development, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to 512-475-3577;  
32 or e-mailed to TWCRulesComments@twc.state.tx.us. The Commission must receive comments  
33 postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

34  
35 The amendments are proposed under Texas Labor Code §301.0015 and §302.002(d), which  
36 provide the Commission with the authority to adopt, amend, or repeal such rules as it deems  
37 necessary for the effective administration of Agency services and activities, the Texas Human  
38 Resources Code §44.002, regarding Administrative Rules, and the Texas Labor Code §301.021,  
39 which authorizes the Commission to accept donations in an open meeting by a majority of the  
40 voting members of the Commission.

1  
2 **CHAPTER 809. CHILD CARE AND DEVELOPMENT**  
3

4 **SUBCHAPTER B. GENERAL MANAGEMENT REQUIREMENTS**  
5

6 **§809.20. Leveraging Local Resources**  
7

8 (a) Leveraging Local Funds. The Commission encourages Boards to secure local public  
9 and private funds for the purpose of matching federal funds in order to maximize ~~to~~  
10 ~~the extent possible to leverage all available~~ resources for child care needs in the  
11 community.

12  
13 ~~(1) A Board may secure local funds for match in the form of one or more of the~~  
14 ~~methods in order to leverage (match) against federal funds available through~~  
15 ~~the Commission:~~

16  
17 ~~(A) donations of funds from a private entity;~~

18 ~~(B) certification of expenditures by a private entity that represent expenditures~~  
19 ~~eligible for federal match and that were not restricted in their use for a~~  
20 ~~specific individual, organization, facility or institution;~~

21 ~~(D) Certifications of expenditures by a public entity that represent~~  
22 ~~expenditures eligible for federal match.~~

23 ~~(2) A Board's performance in securing and leveraging local funds for match may~~  
24 ~~make the Board eligible for incentive awards.~~  
25

26 (b) Local Funds Accepted by the Commission. The Commission accepts the following  
27 as local match:

28  
29 (1) Funds from a private entity that:  
30

31 (A) are donated without restrictions that require their use for:

32  
33 (i) a specific individual, organization, facility, or institution; or

34  
35 (ii) an activity not included in the CCDF State Plan or allowed under  
36 this chapter;

37  
38 (B) do not revert back to the donor's facility or use;

39  
40 (C) are not used to match other federal funds; and

41  
42 (D) are certified by both the donor and the Commission as meeting the  
43 requirements of subparagraphs (A)–(C) of this paragraph.

44  
45 (2) Funds from a public entity that:  
46

1 (A) are transferred without restrictions that would require their use for an  
2 activity not included in the CCDF State Plan or allowed under this  
3 chapter;

4  
5 (B) are not used to match other federal funds; and

6  
7 (C) are not federal funds, or are federal funds authorized by federal law to be  
8 used to match other federal funds.

9  
10 (3) Expenditures by a public entity certifying that the expenditures:

11  
12 (A) are for an activity included in the CCDF State Plan or allowed under this  
13 chapter;

14  
15 (B) are not used to match other federal funds; and

16  
17 (C) are not federal funds, or are federal funds authorized by federal law to be  
18 used to match other federal funds.

19  
20 (cb) Securing Local Funds to Access Federal Matching Funds from the Commission.

21  
22 (1) A Board shall ~~manage the secure~~ ing of funds, including the selection of  
23 ~~pledged and completed private~~ public donations, public transfers, and public  
24 certifications that are used by the Board to receive federal matching funds  
25 through the Commission.

26  
27 (2) A Board is encouraged to secure additional local ~~shall ensure that federal~~  
28 ~~matching~~ funds in excess of the amount required to ~~are maximized by securing~~  
29 ~~local funds for match in an amount that may exceed the amount required to~~  
30 ~~match available~~ federal funds allocated to the Board in order to maximize its  
31 potential to receive additional federal funds should they become available.

32  
33 (3) A Board's performance in securing and leveraging local funds for match may  
34 make the Board eligible for incentive awards.

35  
36 ~~(c) Documenting Pledged Donations, Transfers and Certifications. A Board shall~~  
37 ~~maintain written documentation of pledged donations, transfers and certifications~~  
38 ~~that contain, at a minimum, the following:~~

39  
40 ~~(1) the signature of the representative of the Board;~~

41  
42 ~~(2) the signature of the potential contributor;~~

43  
44 ~~(3) the potential contributors commitment to fulfill the pledge of the donation,~~  
45 ~~transfer or certification by paying or certifying the funds to the Commission~~  
46 ~~for use in a specific workforce area on a set payment or certification schedule;~~



1  
2 ~~(4) the Board's commitment to use the donated or transferred funds as requested by~~  
3 ~~the contributor, as long as it is consistent with federal regulations at 45 CFR~~  
4 ~~§ 98.53; and~~

5  
6 ~~(5) sufficient information to determine that the funds will be used in a manner~~  
7 ~~consistent with 45 CFR § 98.53.~~

- 8 (d) Submitting Private Pledged Donations, Public Transfers, and Public Certifications to  
9 for Acceptance by the Commission.

10  
11 A Board shall submit private pledged donations, public transfers, and public  
12 certifications to the Commission for acceptance, with sufficient information to  
13 determine that the funds meet the requirements of subsection (b) of this section.

- 14  
15 (e) Completing Private Donations, Public Transfers, and Public Certifications.

16  
17 (1) A Board shall ensure that:

18  
19 (A) private donations of cash and public transfers of funds are paid to the  
20 Agency; and ~~that~~

21  
22 (B) public certifications are ~~also~~ submitted to the Agency.

23  
24 (2) Private dDonations and public transfers are considered complete to the extent  
25 that the funds have been paid to the Agency.

26  
27 (3) Public cCertifications are considered complete to the extent that a signed  
28 written instrument is delivered to the Agency that reflects that the public entity  
29 has expended a specific amount of funds on eligible child care services.

30  
31 ~~(f) Reporting. A Board shall report information relating to pledged and completed~~  
32 ~~donations, transfers and certifications as referenced in subsections (d) and (e) of this~~  
33 ~~section and § 800.72. Reporting Requirements.~~

34  
35 ~~(f)(g)~~ Monitoring. A Board shall monitor the funds secured for match and the  
36 expenditure of any resulting funds to ensure that expenditures of ~~unmatched~~ federal  
37 matching funds available through the Commission do not exceed an amount that  
38 corresponds to the private donations, public transfers, and public certifications that  
39 are completed by the end of the program year.