CHAPTER 805. ADULT EDUCATION AND LITERACY

PROPOSED RULES WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS REGISTER. THIS DOCUMENT WILL NOT HAVE ANY SUBSTANTIVE CHANGES BUT IS SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE TEXAS REGISTER.

ON JULY 31, 2018, THE TEXAS WORKFORCE COMMISSION PROPOSED THE RULES BELOW WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS REGISTER.

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The Texas Workforce Commission (TWC) proposes amendments to the following sections of Chapter 805, relating to Adult Education and Literacy:

Subchapter A. General Provisions, §§805.1 - §805.4
Subchapter B. Staff Qualifications, §805.21
Subchapter C. Service Delivery Structure and Alignment, §§805.41 - 805.43, §805.45

TWC proposes the repeal of the following sections of Chapter 805, relating to Adult Education and Literacy:

Subchapter A. General Provisions, §805.5
Subchapter D. Other Provisions, §805.62

PART I. PURPOSE AND BACKGROUND

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed amendments to Chapter 805 is to align Adult Education and Literacy (AEL) provisions and definitions with the Workforce Innovation and Opportunity Act (WIOA) Title II, clarify language, delete obsolete terms, and extend the allowable terms of AEL advisory committee members.

WIOA was signed into law on July 22, 2014, replacing the Workforce Investment Act of 1998. Title II of WIOA includes substantial changes to definitions relating to AEL, participant eligibility, and eligible providers, as well as changes to the overall intent of the law. TWC staff has evaluated TWC Chapter 805 Adult Education and Literacy rules and determined that definitions must be updated and rules amended to align with WIOA.
Additionally, staff has identified the need to amend and repeal certain parts of Chapter 805 based on management of the program and the addition of new rules in the Texas Education Code (TEC).

In 2013, the AEL program and its appropriate rules were transferred from the Texas Education Agency (TEA) to TWC. One of the transferred rules relates to the awarding of diplomas to adults based on the secondary school curriculum, course credit requirements, and tests designated by the commissioner of education. That rule was not relevant to TWC operations, as it pertained to graduation criteria for secondary students who are adults. In 2017, legislation established specific requirements for adult high school diploma requirements, but limited the application of those requirements to nonprofit charter schools. Accordingly, based on TWC operations and the change in state law, there is no longer a need for diploma requirements that were included when AEL was transferred to TWC. Proposed amendments would repeal §805.5 and defer diploma requirements for adults to the TEA.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

TWC proposes the following amendments to Subchapter A:

§805.1. Purpose
Section 805.1(b) is amended to align with the purpose of AEL as outlined in WIOA §203(1)(a) and (b). In §805.1(b), the term "basic education" is replaced by "academic instruction and education services below the postsecondary level," and "enables them to effectively" is replaced with "increase an individual's ability to." Section 805.1(b)(1) is amended to state, "read, write, and speak in English and perform mathematics or other activities necessary for the attainment of a secondary school diploma or its recognized equivalent." Amended §805.1(b)(2) adds "or transition to postsecondary education and training." Section 805.1(b)(4) is removed.

§805.2. Definitions
Section 805.2(1) is amended to align the definition of "adult education" with the definition at WIOA §203(2), which is "programs, activities, and services that include adult education, literacy, workplace adult education and literacy activities, family literacy activities, English language acquisition activities, integrated English literacy and civics education, workforce preparation activities, or integrated education and training." Sections 805.2(1)(A), 805.2(1)(B), and 805.2(1)(C) are repealed.

In §805.2(10), the definition of "contact time" is amended to distinguish between testing and assessment services by adding "testing services," specifying "except for testing services used to determine eligibility."

The current definition of an eligible grant recipient in §805.2(11) is amended to align with the definition of an eligible provider in WIOA §203(5), adding that eligible grant recipients "are organizations that have demonstrated effectiveness in providing adult
education and literacy activities." The list of eligible grant recipients in current
§§805.2(11)(A) - (I) is amended as follows:
--Section 805.2(11)(B) is modified to replace the phrase "of demonstrated effectiveness"
with "or faith-based organization."
--The phrase "of demonstrated effectiveness" is removed from §805.2(11)(C).
--Section 805.2(11)(H) is amended to specify that literacy services are AEL services, and
"adults and families" is replaced with "eligible individuals."
--Current §805.2(11)(I) is amended to add "or coalition" after "consortium."
--New §805.2(11)(J) adds "a partnership between an employer and an entity described in
any of subparagraphs (A) through (I)" as an eligible grant recipient.

§805.3. Federal and State AEL Funds
Section 805.3 is amended to align with the description of an individual in AEL programs
for which federal AEL funds may be used to the definition of an eligible individual under
WIOA. Amended §805.3(a) removes "out-of-school." Section 805.3(a)(1) replaces "lack
sufficient mastery of basic educational skills to enable the individuals to function
effectively in society," with "are basic skills deficient." Section 805.3(a)(3) replaces "are
unable to speak, read, or write the English language" with "are English language
learners."

Section 805.3(b)(1) replaces "lack sufficient mastery of basic educational skills to enable
the individuals to function effectively in society," with "are basic skills deficient."
Section 805.3(b)(3) replaces "are unable to speak, read, or write the English language"
with "are English language learners."

Section 805.3(d) is amended to remove language that states that the use of AEL funds is
for specific student populations.

§805.4. Essential Program Components
Section 805.4 is amended to align the essential AEL program components to the
allowable and required AEL activities in WIOA. The current six essential program
components are expanded and revised as follows:
--Section 805.4(1) is amended to remove "basic" from "adult basic education."
--Section 805.4(2) is amended to replace "programs for adults of limited English
proficiency" with "literacy."
--Section 805.4(3) is amended to replace "adult secondary education, including programs
leading to a high school equivalency certificate or a high school diploma" with
"workplace adult education and literacy activities."
--Section 805.4(4) is amended to replace "instructional services to improve student
proficiencies necessary to function effectively in adult life, including accessing further
education, employment-related training, or employment" with "family literacy activities."
--Section 805.4(5) is renumbered as §805.4(9) and "paragraphs (1) - (4) of this section" is
changed to "paragraphs (1) - (8) of this section."
--Section 805.4(6) is renumbered as §805.4(10).
--New §805.4(5) is added to include "English language acquisition services."
--New §805.4(6) adds "integrated English literacy and civics education."
--New §805.4(7) adds "workforce preparation activities."
--New §805.4(8) adds "integrated education and training."

§805.5. Diploma Requirements
Section 805.5 is repealed because these rules on diploma requirements are no longer relevant to AEL.

SUBCHAPTER B. STAFF QUALIFICATIONS
TWC proposes the following amendments to Subchapter B:

§805.21. Staff Qualifications and Training
Section 805.21(1) is amended by adding "instructional" before "aides," to clarify that instructional aides who provide direct instruction shall receive 15 hours of professional development each year. Section 805.21(6) adds "including instructional aides."

SUBCHAPTER C. SERVICE DELIVERY STRUCTURE AND ALIGNMENT
TWC proposes the following amendments to Subchapter C:

§805.41. Procurement and Contracting
Section §805.41(b) is amended to replace "request for proposals (RFP)" with "grant solicitation" to align with TWC's direction on AEL competition process and requirements.

§805.42. Program Delivery System
Section 805.42(c)(2) is amended to replace "career training" with "workforce training," to align with WIOA policy on postsecondary education and training.

§805.43. Advisory Committees
Section 805.43(1)(C) replaces "one term" with "no more than two terms. The Commission shall provide direction when appointing a member to a second term," to expand Statewide Advisory Committee term limits to ensure allowable consistency and continuity on committee projects.

§805.45. Tuition and Fees
Section 805.45 adds a provision to align to 2 CFR §200.305(b)(5), specifying that funds generated by tuition and fees "must be expended before federal and state grant funds."

SUBCHAPTER D. OTHER PROVISIONS
TWC proposes the following amendments to Subchapter D:

§805.62. Evaluation of Programs
Section 805.62 is repealed, as WIOA requires that funds provided under WIOA §231 be used on state leadership activities, including monitoring and evaluating the quality of and improvement in AEL activities.

PART III. IMPACT STATEMENTS
Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be 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 rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code §2001.024, TWC has determined that the requirement to repeal or amend a rule, as set forth in Texas Government Code §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. The Commission completed a Takings Impact Analysis for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to align AEL provisions and definitions with WIOA Title II, clarify language, delete obsolete terms, and extend the allowable terms of AEL advisory committee members.

The proposed rulemaking action will not create any additional burden on private real property. The proposed rulemaking action will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that
would otherwise exist in the absence of the governmental action. Therefore, the proposed
rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Government Growth Impact Statement
TWC has determined that during the first five years the proposed amendments will be in
effect:
--the proposed amendments will not create or eliminate a government program;
--implementation of the proposed amendments will not require the creation or elimination
of employee positions;
--implementation of the proposed amendments will not require an increase or decrease in
future legislative appropriations to TWC;
--the proposed amendments will not require an increase or decrease in fees paid to TWC;
--the proposed amendments will not expand, limit, or eliminate an existing regulation;
--the proposed amendments will not change the number of individuals subject to the
rules; and
--the proposed amendments will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis
TWC has determined that the proposed rules will not have an adverse economic impact
on small businesses or rural communities, as these proposed rules place no requirements
on small businesses or rural communities.

Mariana Vega, Director of Labor Market and Career Information, has determined that
there is no significant negative impact upon employment conditions in the state as a result
of the rules.

Courtney Arbour, Director, Workforce Development Division, has determined that for
each year of the first five years the rules are in effect, the public benefit anticipated as a result
of enforcing the proposed rules will be to ensure delivery of AEL services in
accordance with current federal standards.

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

PART IV. COORDINATION ACTIVITIES
In the development of these rules for publication and public comment, TWC sought the
involvement of Texas' 28 Local Workforce Development Boards. TWC provided the
concept paper regarding these rule amendments to AEL grant recipients for consideration
and review on May 22, 2018. TWC also conducted a conference call with AEL grantees
on May 24, 2018, to discuss the concept paper. During the rulemaking process, TWC
considered all information gathered in order to develop rules that provide clear and
concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments,
Workforce Program Policy, Attn: Workforce Editing, 101 East 15th Street, Room 459T,
Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. Comments must be received or postmarked no later than 30 days from the date this proposal is published in the Texas Register.

The rules are proposed under 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.

The proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.
CHAPTER 805. ADULT EDUCATION AND LITERACY

SUBCHAPTER A. GENERAL PROVISIONS

§805.1. Purpose.

(a) The rules contained in this chapter may be cited as the Adult Education and Literacy (AEL) rules.

(b) The purpose of the AEL programs is to provide adults with sufficient academic instruction and education services below the postsecondary level to increase an individual's ability to acquire the basic educational skills necessary for literate functioning:

(1) read, write, and speak in English and perform mathematics or other activities necessary for the attainment of a secondary school diploma or its recognized equivalent;

(2) participate in job training and retraining programs or transition to postsecondary education and training; and

(3) obtain and retain employment; and

(4) continue their education to at least the level of completion of secondary school.

§805.2. Definitions.

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

(1) Adult education--Programs, activities, and services that include adult education, literacy, workplace adult education and literacy activities, family literacy activities, English language acquisition activities, integrated English literacy and civics education, workforce preparation activities, or integrated education and training. Basic and secondary instruction and services for adults.

   (A) Adult basic education (ABE) --Instruction in reading, writing, and speaking and comprehending English, and solving quantitative problems, including functional context, designed for adults who:

       (i) have minimal competence in reading, writing, and solving quantitative problems;
(ii) are not sufficiently competent to speak, read, or write the English language; or

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(iii) are not sufficiently competent to meet the requirements of adult life in the United States, including employment commensurate with the adult's real ability.

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(B) Adult secondary education (ASE)--Comprehensive secondary instruction below the college credit level in reading, writing and literature, mathematics, science, and social studies, including functional context, and instruction for adults who do not have a high school diploma or its equivalent.

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(C) English literacy education (EL)--Instruction designed to help adults with limited English proficiency achieve competence in the English language.

(2) AEL consortium--A partnership of educational, workforce development, social service entities, and other public and private organizations that agree to partner, collaborate, plan, and apply for funding to provide AEL and related support services. Consortium members shall include an AEL grant recipient, AEL fiscal agent, an AEL lead organization of a consortium, and AEL service provider(s). Consortium members may serve in one or more of the functions in accordance with state statutes and Commission rules.

(3) AEL fiscal agent--An entity that is assigned financial management duties as outlined in an Agency-AEL contract or is assigned this function as a member of an AEL consortium.

(4) AEL grant recipient--An eligible grant recipient within a local workforce development area (workforce area), as defined in §800.2(11) of this title, that is awarded AEL funds by the Agency. The AEL grant recipient also may act as an AEL lead organization of a consortium, AEL fiscal agent, or AEL service provider as designated in an agreement with an AEL consortium.

(5) AEL lead organization of a consortium--An organization designated as the AEL consortium manager in a written agreement between AEL consortium members. The AEL lead organization of a consortium is responsible for planning and leadership responsibilities as outlined in the written agreement and also may serve as an AEL grant recipient, AEL fiscal agent, or AEL service provider. If a consortium does not identify the lead organization of a consortium through a written agreement, the AEL grant recipient will be presumed to assume the responsibility of the lead organization of the consortium.
(6) AEL service provider--An entity that is eligible to provide AEL services as specified in 20 USC §9202 and Texas Labor Code §315.003.

(7) Assessment services--The processes, administration, review, and consultation provided to individuals in accordance with the AEL assessment procedure and other agency guidance that direct placement, progress, achievement, and overall program accountability in AEL and other services, including the identification of potential academic or support service needs.

(8) Clock hour--60 minutes.

(9) College and career transitional support--Support that may include, but is not limited to, recruiting and outreach, intensive individual case management, career and academic counseling, enrollment and financial aid support, self-advocacy skills development, academic and career support strategies, college and workforce system capacity building, student data records management, and providing access to other support and employment services.

(10) Contact time--The cumulative sum of minutes during which an eligible adult student receives instructional, counseling, or assessment, or testing services (except for testing services used to determine eligibility) from a staff member supported by federal and state AEL funds as documented by local attendance and reporting records.

(A) Student contact time generated by volunteers may be accrued by the AEL program when volunteer services are verifiable by attendance and reporting records and volunteers meet requirements under §805.21 of this title (relating to Staff Qualifications and Training).

(B) A student contact hour is 60 minutes.

(11) Eligible grant recipient--An entity, as specified in state and federal law, that is eligible to receive AEL program funding. Eligible grant recipients are organizations that have demonstrated effectiveness in providing adult education and literacy activities, and may include:

(A) a local educational agency;

(B) a community-based organization or faith-based organization of demonstrated effectiveness;
(C) a volunteer literacy organization of demonstrated effectiveness;

(D) an institution of higher education;

(E) a public or private nonprofit agency;

(F) a library;

(G) a public housing authority;

(H) a nonprofit institution that is not described in any of subparagraphs (A) through (G) of this paragraph and has the ability to provide adult education and literacy services to eligible individuals, adults, and families; and

(I) a consortium or coalition of the agencies, organizations, institutions, libraries, or authorities described in any of subparagraphs (A) through (H) of this paragraph; and

(J) a partnership between an employer and an entity described in any of subparagraphs (A) through (I).

(12) Literacy--An individual's ability to read, write, and speak in English, and to compute and solve problems at levels of proficiency necessary to function on the job, in the family of the individual, and in society.

(13) Principles of adult learning--A wide variety of research-based professional development topics that include instructional and advising characteristics specific to adults, and support the range of knowledge, skills, and abilities adults need to understand and use information, express themselves, act independently, effectively manage a changing world, and meet goals and objectives related to career, family, and community participation. Instructional principles include, but are not limited to, engaging adults and customizing instruction on subjects that have immediate relevance to their career and personal goals and objectives, building on their prior knowledge and experience, and supporting them in taking responsibility for their learning.

(14) Proctoring--Support in the administration of tests or pretests under the guidance of a staff member who oversees program assessment services and/or accountability assessment.

(15) Professional development--Encompasses all types of facilitated learning activities for instructors and staff of AEL programs and organizations participating in AEL programs and services. Professional development can be face-to-face or virtual and can be a workshop,
lecture, presentation, poster session, roundtable discussion, study circle, or demonstration that meets for a minimum of one hour and upwards in increments of one half (0.5) hour (that is, the hours assigned for purposes of tracking AEL staff professional development requirements in TEAMS, the Texas Educating Adults Management System) to accomplish a predetermined educational or learning outcome.

(16) Program year--The AEL program year is July 1 through June 30.

(17) Substitute--An instructor who works on call, does not have a full-time assignment, and does not assume permanent responsibilities for class instruction. An individual is considered a substitute if he or she instructs a particular class for four or fewer consecutive class meetings.

(18) Support services--Services such as transportation, child care, dependent care, housing, and needs-related payments, which are necessary to enable an individual to participate in activities as defined in Workforce Innovation and Opportunity Act (WIOA) §2.

(19) Workforce training--Services described in WIOA §134(c)(3)(D), including the following:

(A) occupational skills training, including training for nontraditional employment;

(B) on-the-job training;

(C) incumbent worker training;

(D) programs that combine workplace training with related instruction, which may include cooperative education programs;

(E) training programs operated by the private sector;

(F) skill upgrading and retraining;

(G) entrepreneurial training;

(H) transitional jobs;

(I) job readiness training provided in combination with services described in any of subparagraphs (A) through (H) of this paragraph;

(J) AEL activities, including activities of English language acquisition and integrated education and training programs,
provided concurrently or in combination with services described in any of subparagraphs (A) through (G) of this paragraph; and

(K) customized training conducted with a commitment by an employer or group of employers to employ an individual upon successful completion of the training.

§805.3. Federal and State AEL Funds.

(a) Federal AEL funds may be used for AEL programs for out-of-school individuals who have attained 16 years of age and who are not enrolled or required to be enrolled in secondary school under state law and:

(1) are basic skills deficient lack sufficient mastery of basic educational skills to enable the individuals to function effectively in society;

(2) do not have a secondary school diploma or its recognized equivalent, and have not achieved an equivalent level of education; or

(3) are English language learners are unable to speak, read, or write the English language.

(b) State AEL funds are to be used for AEL programs for out-of-school individuals who are beyond the compulsory age of attendance unless specifically exempted from compulsory school attendance by Texas Education Code §25.086 and:

(1) are basic skills deficient lack sufficient mastery of basic educational skills to enable the individuals to function effectively in society;

(2) do not have a secondary school diploma or its recognized equivalent, and have not achieved an equivalent level of education; or

(3) are English language learners are unable to speak, read, or write the English language.

(c) The proportion of students served who meet the requirements of subsection (a) of this section, but do not meet the requirements of subsection (b) of this section, shall not exceed the grant recipient's percentage of federal funds to the total allocation.

(d) The Commission shall establish annual performance benchmarks for the use of AEL funds in serving specific student populations, including the
§805.4. Essential Program Components.

An AEL grant recipient shall ensure that AEL programs provide the following essential program components are provided:

1. Adult basic education;
2. Literacy programs for adults of limited English proficiency;
3. Workplace adult education and literacy activities, adult secondary education, including programs leading to a high school equivalency certificate or a high school diploma;
4. Family literacy activities, instructional services to improve student proficiencies necessary to function effectively in adult life, including accessing further education, employment-related training, or employment;
5. English language acquisition services;
6. Integrated English literacy and civics education;
7. Workforce preparation activities;
8. Integrated education and training;
9. Assessment and guidance services related to paragraphs (1) - (8) of this section; and
10. Collaboration with multiple partners in the community to expand the services available to adult learners and to prevent duplication of services.

§805.5. Diploma Requirements.

The standards for the awarding of diplomas to adults shall be those established under 19 Texas Administrative Code, Chapter 74, Subchapter A (relating to Curriculum Requirements) with the following exceptions:

1. There shall be no limit to the number of secondary credits adults may earn by demonstration of competence.
(2) Adults may earn the required physical education credits by one or more of the following:

(A) Satisfactory completion of approved secondary physical education courses; or
(B) Substitution of state-approved secondary elective courses.

(3) Adults shall meet the requirements for successful performance on a secondary-level test designated by the commissioner of education.

Subchapter B. Staff Qualifications

§805.21. Staff Qualifications and Training.

The requirements of this section shall apply to all AEL staff hired after July 1, 2013, excluding clerical and janitorial staff.

(1) AEL instructional aides, administrative, data entry, proctoring staff, and staff providing support or employment services to students shall have at least a high school diploma or high school equivalency certificate.

(2) AEL directors, supervisors, and staff that oversee program assessment services and/or overall program accountability, and instructors in the content areas of reading, writing, mathematics, and English language acquisition, including substitutes, shall possess at least a bachelor's degree.

(3) Workforce training instructors must meet the requirements of the institution and/or the associated accrediting or credentialing entity, if applicable.

(4) Requests for exemptions for staff qualification requirements in individual cases:

(A) may be submitted to the Agency for approval with a justification outlining extenuating circumstances; and

(B) shall be submitted and approved prior to an individual being placed in the position in question.

(5) All AEL directors and supervisors, and other staff with program oversight or coordination responsibilities shall receive 15 clock hours of professional development each program year with the following exception: Staff hired on or after January 1 of a program year may
require half of the professional development time required for that program year.

(6) All AEL instructional staff, including instructional aides, except substitutes, paid with AEL grant funds or who acquire student contact hours, including volunteers, shall receive at least 15 clock hours of professional development each program year, with the following specifications:

(A) Instructors in the content areas of reading, writing, mathematics, and English language acquisition shall:

(i) receive three clock hours of training in principles of adult learning;

(ii) receive six clock hours in relevant areas of literacy instruction; and

(iii) receive the remaining six clock hours of training in content areas at the discretion of the program, but consisting of content related to the AEL program's purpose, which is to provide adults with sufficient basic education that enables them to effectively:

(I) acquire the basic educational skills necessary for literate functioning;

(II) participate in job training and retraining programs;

(III) obtain and retain employment; and

(IV) continue their education to at least the level of secondary school completion and postsecondary education preparation; or

(iv) waive six clock hours of content area in staff professional development for individuals who have 18 or more college semester undergraduate or graduate credit hours in relevant areas of literacy instruction.

(B) Staff, as described in subparagraph (A) of this paragraph, hired on or after January 1 of a program year, may require half of the professional development time required for that program year. For instructors in the content areas of reading, writing, mathematics, and English language acquisition, these hours must include three clock hours of training in principles of adult
learning and three clock hours in the relevant areas of literacy instruction.

(C) Staff described in paragraph (6) of this subsection shall receive at least six clock hours of the required professional development outlined in paragraph (6)(A)(i) - (iii) of this subsection within 30 calendar days of providing instructional activities, if new to AEL or to direct student service delivery. The six hours include the required three hours of principles of adult learning and three hours of the relevant areas of literacy instruction. Waiving of the requirements for staff new to direct student services must be approved by Agency AEL staff prior to the individual providing any instructional services.

(7) All staff providing support services or college and career transitional support who are paid through an AEL grant shall receive at least three clock hours of professional development each program year.

(8) AEL staff assigned test proctoring or data entry duties shall receive at least three clock hours of professional development related to their primary job duties each program year.

(9) The requirements for professional development may be reduced by grant recipients in individual cases in which exceptional circumstances prevent employees from completing the required hours of professional development. Exceptional circumstances can include absence from the program or work due to personal health reasons or emergency familial responsibilities, including maternity/paternity. Documentation justifying these circumstances shall be available for monitoring and as requested by AEL staff.

(10) Records of staff qualifications and professional development shall be maintained by each grant recipient and shall be available for monitoring.

**SUBCHAPTER C. SERVICE DELIVERY STRUCTURE AND ALIGNMENT**

**§805.41. Procurement and Contracting.**

(a) Beginning with Program Year 2014, eligible grant recipients shall compete for funding through a statewide procurement process conducted in accordance with federal and state procurement requirements. AEL funding shall be allocated as set forth in §800.68 of this title.
(b) Eligible grant recipients shall apply directly to the Agency using the *grant solicitation* request for proposals (RFP) process, and shall meet all deadlines, requirements, and guidelines set forth in the *grant solicitation* RFP.

(c) Contracts awarded to AEL grant recipients shall be limited to two years, with the option of three one-year renewals, at the Commission’s discretion. In considering a renewal, the Commission shall take into account performance and other factors.

(1) Renewals for years three, four, and five are not automatic, and are based on meeting or exceeding performance and expenditure benchmarks, or other factors as determined by the Commission.

(2) At the completion of the five-year maximum contract term, the Agency shall conduct a new competitive statewide procurement, including those contracts that have been in effect for less than the maximum five-year contract term.

(d) Determinations by the Agency in the statewide procurement process will be based on the indicated ability of the eligible grant recipient to effectively perform all services and activities needed to fully comply with contract performance requirements and all contract terms and conditions, and may be influenced by factors used to determine the allocation of AEL funds or other objective data or criteria.

§805.42. Program Delivery System.

(a) There shall be a statewide AEL program delivery system that provides AEL services on a coordinated basis within each workforce area.

(b) An eligible grant recipient must apply directly to the Agency for AEL funding.

(c) Each eligible grant recipient must demonstrate an ability to:

(1) plan and develop a service delivery strategy that includes a broad analysis of the educational, economic, and workforce development trends across the entire workforce area to provide eligible AEL students with comprehensive and locally responsive services; and

(2) expand, improve, and coordinate delivery of education, *workforce training*, career training, workforce development, and support services.

(d) Each eligible grant recipient applying for AEL funding on behalf of an AEL consortium must:
meet the requirements set forth in subsection (c)(1) - (2) of this section;

(2) designate an entity to serve as the AEL lead organization of the consortium; and

(3) designate an entity to serve as AEL fiscal agent for the AEL consortium. The AEL fiscal agent is responsible for making and filing all financial reports to the AEL grant recipient that will review all reports and submit to the Agency on behalf of the consortium.

(e) An AEL grant application must reflect service delivery strategies for the workforce area. In workforce areas that are heavily populated or have large service regions, the Agency may elect to contract with more than one AEL grant recipient within a workforce area.

(f) An AEL grant recipient, awarded AEL funds by the Agency, shall be responsible for performing all services and activities required to fully comply with contract performance requirements and all contract terms and conditions. Responsibilities include, but are not limited, to the following:

(1) Communication.

(A) The AEL grant recipient shall serve as the point of contact with the Agency.

(B) For an AEL consortium, on behalf of AEL consortium members, the AEL grant recipient shall:

(i) transmit questions and grant-related needs for AEL consortium members to the Agency; and

(ii) carry out the programmatic functions of an AEL grant by communicating regularly with members of the AEL consortium and by sharing information, policy or procedural changes, and technical assistance provided by the Agency to oversee the grant.

(2) Monitoring. The AEL grant recipient shall:

(A) monitor programmatic and fiscal progress against goals and project deliverables; and

(B) timely notify the Agency of problems related to achievement of programmatic and fiscal goals of the grant in accordance with appropriate systems to receive and compile outcome measures and fiscal reports.
(3) Technical assistance. The AEL grant recipient shall carry out the programmatic and reporting functions of an AEL grant by providing or requesting technical assistance for its program, or in an AEL consortium for AEL consortium members, related to the design, implementation, and internal evaluation of their AEL services or support services.

(4) Professional development. The AEL grant recipient shall plan and coordinate the provision of necessary professional development opportunities for its program, or in an AEL consortium to the AEL consortium members.

(5) Reporting. The AEL grant recipient shall:

(A) collect and compile all fiscal and programmatic information regarding the activities, expenses, and performance outputs and outcomes of the AEL grant; and

(B) submit this information to the Agency.

(6) Workforce area coverage.

(A) The AEL grant recipient shall ensure that services are provided to the portion of the workforce area designated in the AEL grant application, whether through in-person services or distance learning, or a combination of methods.

(B) For an AEL consortium, the AEL grant recipient shall ensure that services are provided to the portion of the workforce area, as designated for the consortium in the AEL grant application, whether through in-person services or distance learning, or a combination of methods.

(i) If a consortium member fails to perform in accordance with the AEL consortium's coordinated service delivery plan, the AEL grant recipient shall provide technical assistance, as appropriate;

(ii) If a consortium member withdraws from a consortium, the AEL grant recipient shall ensure that a letter of intent to withdraw is provided to the Agency's grant contract manager. The AEL grant recipient shall coordinate with remaining consortium members to develop an alternative proposal for service delivery and submit it to the Agency for approval;
(iii) If an AEL lead organization of a consortium withdraws from a consortium or from its role as the lead organization of the consortium, the AEL grant recipient must ensure that a letter of intent to withdraw is provided to the Agency contract manager. The AEL grant recipient must coordinate with remaining consortium members to identify an alternative lead organization of the consortium and submit it to the Agency for approval; and

(iv) If, in a workforce area with multiple consortia that cover the entire workforce area, one or more consortia withdraws, the AEL grant recipient shall ensure that a letter of intent to withdraw is provided to the Agency's grant contract manager. The Agency will coordinate with the remaining consortia to develop an alternative proposal for service delivery for the entire workforce area.

(g) For an AEL consortium, the Agency reserves the right to reevaluate an AEL grant in light of any change in the AEL consortium membership based on the consortium's continued ability to meet the terms of the original grant award as demonstrated through an alternative proposal. The Agency's reevaluation may include termination of all awards under the AEL consortium if deemed appropriate.

(1) If an AEL consortium or AEL consortium member withdraws, the funds and activities committed to in the application shall not be shifted to another AEL consortium, AEL consortium member, or a new institution without written Agency approval.

(2) The AEL grant recipient shall contact the Agency's grant contract manager to discuss options for replacement grants within the AEL consortium.

§805.43. Advisory Committees.

Statewide Advisory Committee. The Commission shall establish a statewide AEL advisory committee, composed of no more than nine members appointed by the Commission.

(1) Committee members shall:

(A) have AEL expertise and may include adult educators, providers, advocates, current or former AEL students, and leaders in the nonprofit community engaged in literacy promotion efforts;
(B) include at least one representative of the business community and
at least one representative of a Local Workforce Development
Board (Board); and

(C) serve for staggered two-year terms, and be limited to no more
than two terms. The Commission shall provide direction when
appointing a member to a second an additional termone term.

(2) Membership shall be reviewed when a member's employment changes
to determine whether the individual continues to meet the requirements
for membership.

(3) The committee shall meet at least quarterly and submit a written report
to the Commission on an annual basis.

(4) The committee shall select a presiding officer as required by Texas
Government Code, Chapter 2110.

(5) The committee shall advise the Commission on:

(A) the development of:

   (i) policies and program priorities that support the development
       of an educated and skilled workforce in the state;

   (ii) statewide curriculum guidelines and standards for AEL
       services that ensure a balance of education and workplace
       skills development;

   (iii) a statewide strategy for improving student transitions to
       postsecondary education and career and technical education
       training; and

   (iv) a centralized system for collecting and tracking
       comprehensive data on AEL program performance
       outcomes;

(B) the exploration of potential partnerships with entities in the
nonprofit community engaged in literacy-promotion efforts,
entities in the business community, and other appropriate entities
to improve statewide literacy programs; and

(C) any other issue the Commission considers appropriate.
§805.45. Tuition and Fees.

Tuition and fees shall not be charged unless the entity charging them is statutorily authorized to do so. Funds generated by tuition and fees shall be used for the AEL instructional programs, and must be expended before federal and state grant funds, in accordance with 2 CFR §200.305(b)(5).

SUBCHAPTER D. OTHER PROVISIONS

§805.62. Evaluation of Programs.

The Commission shall evaluate AEL programs based on the indicators of program quality for adult education.