CHAPTER 802. INTEGRITY OF THE TEXAS WORKFORCE SYSTEM

ADOPTED RULES WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS REGISTER. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE TEXAS REGISTER.

ON FEBRUARY 4, 2014, THE TEXAS WORKFORCE COMMISSION ADOPTED THE BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS REGISTER.

Estimated date of publication in the Texas Register: February 21, 2014
The rules will take effect: February 24, 2014

The Texas Workforce Commission (Commission) adopts the following new section to Chapter 802, relating to Integrity of the Texas Workforce System, without changes, as published in the November 29, 2013, issue of the Texas Register (38 TexReg 8599):

Subchapter I. Incentive Awards, §802.169

The Commission adopts amendments to the following sections of Chapter 802, relating to Integrity of the Texas Workforce System, without changes, as published in the November 29, 2013, issue of the Texas Register (38 TexReg 8599):

Subchapter A. Purpose and General Provisions, §802.1
Subchapter D. Agency Monitoring Activities, §§802.61 - 802.66
Subchapter E. Board and Workforce Service Provider Monitoring Activities, §§802.81 - 802.87
Subchapter F. Performance and Accountability, §§802.101 - 802.104
Subchapter G. Corrective Actions, §§802.121 - 802.125
Subchapter I. Incentive Awards, §§802.161, 802.162, and 802.164

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

Senate Bill (SB) 307, enacted by the 83rd Texas Legislature, Regular Session (2013), added Texas Labor Code, Chapter 315, which transferred adult education and literacy (AEL) programs from the Texas Education Agency (TEA) to the Commission no later than January 1, 2014.

SB 307 mandates that the Commission:
--develop, administer, and support a comprehensive statewide adult education program and coordinate related federal and state programs for the education and training of adults;
--develop the mechanism and guidelines for the coordination of comprehensive adult education and related skills training services for adults with other entities, including public agencies and private organizations, in planning, developing, and implementing related programs;
--administer adult education funding;
--prescribe rules and standards for teacher certification and accreditation; and
--develop a standardized assessment mechanism, and monitor and evaluate educational and
employment outcomes of students who participate in AEL programs.

In addition, SB 307 mandates that the Agency use a competitive procurement process to award
contracts to service providers of local education programs. To complete a competitive
procurement and have contracts in place by July 2014, a January 2014 target date has been set
for the adoption of new Chapter 805, regarding AEL programs.

SB 307 expressly requires the Commission to develop and establish a process for awarding
performance incentive funds annually. In developing the process for awarding such funds, the
Commission was directed to prescribe fiscal and programmatic performance criteria to be used to
evaluate the performance of entities delivering AEL services. Further, as part of this process, SB
307 requires procedures for taking corrective action. Chapter 802 sets out Agency standards for
program and fiscal monitoring, performance and accountability, and corrective actions and
incentive awards. The adopted amendments to Chapter 802 are intended to apply Agency
standards to AEL programs, as appropriate, consistent with the Adult Education and Family
Literacy Act, federal regulations, National Reporting System for Adult Education, and OMB
Circulars.

Further, to fully incorporate AEL programs into the Agency's administrative oversight
framework, amendments are necessary in Chapter 800, regarding General Administration. To
ensure a seamless transition of rules, the Chapter 800 amendments and new Chapter 805 are
adopted concurrently with this rulemaking.

To better understand the major issues currently facing adult education, the Commission held a
series of nine public meetings across the state to hear from stakeholders concerning the transfer
of the AEL programs from TEA to the Agency, and to gather input about what is currently
working well and where there is opportunity for improvement. AEL stakeholder communication
has continued throughout the transition, and the Commission greatly values the thoughts,
recommendations, and suggestions provided by the AEL stakeholder community.

The purpose of the adopted Chapter 802 amendments is to:
--apply the following to AEL grant recipients and AEL service providers, as appropriate:
   --Provisions governing monitoring responsibilities;
   --Provisions ensuring accountability in meeting the needs of customers, ensuring that
      performance targets are met or exceeded, and describing Commission policies for
      noncompliance;
   --Provisions for imposing corrective actions for failure to ensure compliance with contracted
      performance measures, contract provisions, and other Agency-determined standards; and
   --Provisions regarding incentive awards, rewarding the meeting or exceeding of performance
      benchmarks, and accomplishing the Commission's goals to fulfill the workforce needs of
      employers and to put Texans to work; and
--make technical changes, as necessary.
PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

(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 A. PURPOSE AND GENERAL PROVISIONS
The Commission adopts the following amendments to Subchapter A:

§802.1. Purpose and General Provisions
Section 802.1(a) adds that the purpose of Subchapter A is "to implement Texas Labor Code, Chapter 315, regarding Adult Education and Literacy programs."

SUBCHAPTER D. AGENCY MONITORING ACTIVITIES
The Commission adopts the following amendments to Subchapter D:

§802.61. Purpose
Section 802.61 adds "AEL grant recipients" and "AEL service providers" as entities subject to the provisions of Subchapter D, regarding Agency monitoring activities.

§802.62. Program and Fiscal Monitoring
Section 802.62 adds "AEL grant recipients" and "AEL service providers" as entities subject to the provisions regarding program and fiscal monitoring.

Section 802.62(b)(2) adds "U.S. Department of Education, Office of Vocational and Adult Education guidance." AEL grant recipients' and AEL service providers' compliance with this guidance will be assessed by program and fiscal monitoring activities.

§802.63. Program Monitoring Activities
Section 802.63 adds "AEL grant recipients" and "AEL service providers" as entities subject to the provisions regarding program monitoring activities.

§802.64. Fiscal Monitoring Activities
Section 802.64(a) adds "AEL grant recipients" and "AEL service providers" as entities subject to the provisions regarding fiscal monitoring activities.

§802.65. Agency Monitoring Reports and Resolution
Section 802.65 adds "AEL grant recipients" and "AEL service providers" as entities subject to the provisions regarding Agency monitoring reports and resolution.

§802.66. Access to Records
Section 802.66 adds "AEL grant recipients" and "AEL service providers" as entities subject to the provisions regarding access to records.
The Commission adopts the following amendments to Subchapter E:

§802.81. Scope and Purpose
Section 802.81 adds "AEL grant recipients" as entities subject to the provisions of Subchapter E, regarding Board, workforce service provider, and AEL grant recipient monitoring activities.

§802.82. Board, Workforce Service Provider, and AEL Grant Recipient Monitoring
Section 802.82:
--replaces the title "Board and Workforce Service Provider Monitoring" with "Board, Workforce Service Provider, and AEL Grant Recipient Monitoring" to reflect the addition of "AEL grant recipients" as entities subject to the monitoring provisions; and
--adds "AEL grant recipients" and "AEL service providers" throughout the section as entities subject to the monitoring provisions.

Section 802.82(b) adds "U.S. Department of Education Office of Vocational and Adult Education guidance." AEL service providers' compliance with this guidance will be assessed by monitoring activities.

§802.83. Risk Assessment
Section 802.83 adds "AEL grant recipients" and "AEL service providers" as entities subject to the provisions regarding risk assessment.

§802.84. Monitoring Plan
Section 802.84 adds "AEL grant recipients" as entities subject to the provisions regarding monitoring plans.

§802.85. Controls over Monitoring
Section 802.85 adds "AEL grant recipients," "AEL service providers," and "AEL consortium members, as applicable" as entities subject to the provisions regarding controls over monitoring.

§802.86. Reporting and Resolution Requirements
Section 802.86 adds "AEL grant recipients," "AEL service providers," and "AEL consortium members" as entities subject to the provisions regarding reporting and resolution requirements.

§802.87. Independent Audit Requirements
Section 802.87 adds "AEL grant recipients" and "AEL service providers" as entities subject to the provisions regarding independent audit requirements.

Section 802.87(3) adds "OMB Circular A-21" as guidance to be followed by Boards, workforce service providers, AEL grant recipients, AEL service providers, and Agency grantees.

Section 802.87(4) adds "OMB Circular A-110" as guidance to be followed by Boards, workforce service providers, AEL grant recipients, AEL service providers, and Agency grantees.
Certain paragraphs in this section have been renumbered to accommodate additions.

**SUBCHAPTER F. PERFORMANCE AND ACCOUNTABILITY**

The Commission adopts the following amendments to Subchapter F:

§802.101. Scope and Purpose

Section 802.101 adds "AEL grant recipients" and "AEL service providers" as entities subject to the provisions of the scope and purpose of Subchapter F, regarding performance and accountability.

§802.102. Performance Requirements and Expectations

Section 802.102 adds "AEL grant recipients" as entities subject to the provisions regarding performance requirements and expectations.

Section 802.102(c)(1) adds "U.S. Department of Education Office of Vocational and Adult Education guidance" and "AEL Letters" as guidance that AEL grant recipients must comply with.

§802.103. Performance Review and Assistance

Section 802.103 adds "AEL grant recipients" and "AEL service providers" as entities subject to the provisions regarding performance review and assistance.

§802.104. Performance Improvement Actions

Section 802.104 adds "AEL grant recipients" and "AEL service providers" as entities subject to the provisions regarding performance improvement actions.

**SUBCHAPTER G. CORRECTIVE ACTIONS**

The Commission adopts the following amendments to Subchapter G:

§802.121. Imposition of Corrective Actions and Corrective Action Plans

Section 802.121 adds "AEL grant recipients," "AEL service providers," "AEL grant recipient's chief executive officer," and "AEL consortium members," as appropriate, as entities subject to the provisions regarding imposition of corrective actions and corrective action plans.

Section 802.121(f)(19) removes the term "subrecipient of the Agency" and replaces it with "Agency grantee," to conform with terminology changes made in a previous rulemaking.

**Comment:** One commenter expressed concern regarding the possibility of corrective actions, as set forth in §802.121, to ensure compliance. Specifically, the commenter was concerned that compliance with one or more contracted performance measures is unrealistic.

**Response:** Many of the entities funded by the Commission, including Boards, workforce service providers, and Agency grantees, must ensure compliance with multiple federal, state, or Commission-determined performance measures. The Commission intends to hold AEL grant recipients and AEL service providers to the same standard. The
Commission also works diligently with the entities that it funds to mitigate risk and provide support and assistance before imposing corrective actions set forth in §802.121.

§802.122. Intent to Sanction
Section 802.122 adds "AEL grant recipients" as entities subject to the provisions regarding intent to sanction.

§802.123. Sanctions
Section 802.123 adds "AEL grant recipient" as an entity subject to the provisions regarding sanctions.

§802.124. Penalties for Noncompliance with Requirements
Section 802.124 adds "AEL grant recipient" and "AEL service provider" as entities subject to the provisions regarding penalties for noncompliance with requirements.

§802.125. Sanction Determination
Section 802.125 adds "AEL grant recipient" as an entity subject to the provisions regarding sanction determination.

SUBCHAPTER I. INCENTIVE AWARDS
The Commission adopts the following amendments to Subchapter I:

§802.161. Scope and Purpose
Section 802.161 adds "AEL grant recipients" as entities subject to the provisions regarding the scope and purpose of incentive awards.

§802.162. Definitions
Section 802.162(1) replaces the term "Board" with "workforce area" to clarify that the Commission allocates funds to local workforce development areas.

§802.164. Data Collection
Section 802.164 adds "AEL grant recipients" as entities subject to the provisions regarding data collection.

New §802.169. AEL Incentive Awards
New §802.169 sets forth the provisions for AEL incentive awards, as follows:

New §802.169(a)(1) - (3) provides that the Commission may issue monetary and nonmonetary awards to AEL grant recipients, which may be awarded annually based on high-performance achievement or continuous improvement in meeting performance measures:
--(1) The Commission may determine the amount of funds for use to reward performance annually.
--(2) The Commission may use any combination of existing state or federal performance measures and may develop its own measures to evaluate performance.
--(3) If the Commission includes a measure that does not already have a target, the Commission may:
--(A) set an incentive target for the sole purpose of evaluating eligible AEL grant recipients for the incentive awards (failure to meet an incentive target does not subject the AEL grant recipients to sanction); or
--(B) rate performance based on each AEL grant recipient's "relative improvement" in performance from the prior year.

New §802.169(b) states that the Commission may use a measure and a subset of a measure in the same year.

New §802.169(c)(1) - (2) sets forth that if the Commission is considering issuing awards under this section, the Commission shall notify AEL grant recipients of the method by which performance shall be evaluated for the purpose of giving awards under this rule for that year.
--(1) The notice required under this subsection shall be provided to the AEL grant recipients concurrent with their yearly contracts.
--(2) The notice may include:
   --(A) a listing of awards;
   --(B) a listing of the performance measures to be included in each evaluation category including:
      --(i) the period of evaluation for each performance measure;
      --(ii) the method of evaluation for each performance measure;
   --(C) the weightings to be used to aggregate the performance measures to allow each AEL grant recipient's overall performance to be ranked;
   --(D) the anticipated amount of funds available to be awarded; and
   --(E) other criteria to be used to identify superior performance.

New §802.169(d) provides that AEL grant recipients that receive a performance award shall use the incentive award to carry out AEL activities as allowed by state and federal laws.

New §802.169(e) states that the Commission may modify the assignment of awards based on factors that the Commission identifies as extraordinary circumstances.

COMMENTS WERE RECEIVED FROM:
Kay Brooks, Grant Project Manager for GED & ESL Program, Brazosport College

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

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.
CHAPTER 802. INTEGRITY OF THE TEXAS WORKFORCE SYSTEM

SUBCHAPTER A. PURPOSE AND GENERAL PROVISIONS

§802.1. Purpose and General Provisions.

(a) The purpose of the rules contained in this subchapter is to implement Texas Government Code, §2308.264 and §2308.267, including provisions relating to directly delivering services, Local Workforce Development Board (Board) contracting guidelines, and other conflict of interest provisions, and to implement Texas Labor Code, Chapter 315, regarding Adult Education and Literacy (AEL) programs.

(b) It is the intent of the Commission that these rules strengthen the confidence of the public in the Texas workforce system.

(c) A Board may set local policies that are more restrictive than those set forth in this subchapter.

(d) A Board shall develop the policies and procedures required by this subchapter.

(e) A Board member with an existing contract for workforce services shall comply with this subchapter no later than the earliest of the following:

   (1) the expiration of the contract;
   (2) the contract renewal date; or
   (3) the expiration of the Board member's term or the Board member's resignation.

(f) Pursuant to Texas Government Code, Chapter 551 (Open Meetings Act), a Board shall:

   (1) post appropriate notice;
   (2) ensure that all public business or public policy over which the Board has supervision or control is discussed, considered, or acted upon during a properly posted and convened open meeting; and
   (3) prepare and retain minutes or tape recordings of each open meeting of the Board. The minutes shall:

       (A) state the subject of each deliberation; and
(B) indicate each vote, order, decision, or other action taken.

**SUBCHAPTER D. AGENCY MONITORING ACTIVITIES**

§802.61. Purpose.

(a) The purpose of this subchapter is to set forth the Agency's monitoring provisions and respective responsibilities of Boards, workforce service providers, AEL grant recipients, AEL service providers, and Agency grantees.

(b) The rules contained in this subchapter apply in addition to any program-specific rules to all programs administered by the Agency, except that to the extent of any conflict, the program-specific rules will govern.

§802.62. Program and Fiscal Monitoring.

(a) Boards, workforce service providers, AEL grant recipients, AEL service providers, and Agency grantees shall cooperate with the Agency's program and fiscal monitoring activities, site visits, reviews of documentation, and requests for information. The Agency is committed to ensuring the accountability of Boards, workforce service providers, AEL grant recipients, AEL service providers, and Agency grantees. Therefore, monitoring activities have been developed to:

(1) ensure programs achieve intended results;

(2) ensure resources are efficiently and effectively used for authorized purposes and are protected from waste, fraud, and abuse; and

(3) ensure reliable and timely information is captured and reported to serve as the basis to improve decision-making.

(b) The Agency shall conduct comprehensive monitoring activities to assess the following for Boards, workforce service providers, AEL grant recipients, AEL service providers, and Agency grantees:

(1) Progress in achieving program goals and maintaining fiscal accountability. Program and fiscal monitoring activities include site visits, desk reviews, and analyses of both financial and program outcomes to help identify potential weaknesses before such weaknesses result in substandard performance or questioned costs;

(2) Compliance with applicable laws, regulations, provisions of contracts and Board plans, and official directives and circulars including, but not limited to, U.S. Department of Labor (DOL) Training and Employment Guidance Letters, DOL Training and Employment Notices, U.S. Department of Health and

(3) Compliance with the appropriate uniform administrative requirements for grants and agreements applicable to the type of entity receiving funds, as promulgated in the OMB circulars or rules. Monitoring activities shall encompass both financial and programmatic monitoring and shall be evaluated on a periodic basis. Monitoring reviews result in recommendations that provide practical solutions used to take immediate corrective action.

(c) Boards, workforce service providers, AEL grant recipients, AEL service providers, and Agency grantees are subject to audit and review by the Agency. The Agency may audit and review all relevant records or a sample of the records as needed to determine Board, workforce service provider, AEL grant recipient, AEL service provider, and Agency grantee performance.

(d) Failure to comply with this subchapter shall result in corrective action and possible sanctions pursuant to Subchapter G of this chapter (relating to Corrective Actions).

§802.63. Program Monitoring Activities.

The Agency shall conduct program monitoring activities to ensure that programs achieve intended results. Processes and procedures used to determine Board, workforce service provider, AEL grant recipient, AEL service provider, and Agency grantee performance may include review and evaluation of one or more of the following:

(1) Program results or outcomes
(2) Performance measures
(3) Reporting accuracy
(4) Record keeping and file maintenance
(5) Monitoring functions
(6) Self-monitoring activities
(7) Service delivery
(8) Automated systems and reporting
§802.64. Fiscal Monitoring Activities.

(a) The Agency shall conduct fiscal monitoring activities to ensure that resources are efficiently and effectively used for authorized purposes and are protected from waste, fraud, and abuse. Processes and procedures used to determine Board, workforce service provider, AEL grant recipient, AEL service provider, and Agency grantee performance may include the review and evaluation of one or more of the following:

1. Accounting and reporting systems
2. Budget methodologies
3. Cash management practices
4. Cost allocation plans and processes
5. Cash disbursement compliance and documentation
6. Program income identification and reporting
7. Insurance coverage and risk exposure
8. Oversight and monitoring functions
9. Payroll administration
10. Purchasing and procurement processes and procedures
11. Property accountability and safeguarding

(b) Processes and procedures used to determine Board, workforce service provider, AEL grant recipient, AEL service provider, and Agency grantee performance shall include a review, evaluation, and determination regarding compliance with the appropriate uniform administrative requirements for grants and agreements as well as the appropriate cost principles applicable for the type of entity receiving funds as listed in OMB circulars or rules.
(c) Processes and procedures used to determine Board, workforce service provider, AEL grant recipient, AEL service provider, and Agency grantee performance shall include a review, evaluation, and determination regarding compliance with the applicable requirements regarding cost categories and cost limitations.

§802.65. Agency Monitoring Reports and Resolution.

(a) Monitoring Reports. The Agency's monitoring department shall issue the following monitoring reports summarizing the results of monitoring activities. The reports may include the observations, findings, and recommendations of the monitoring team and Board, workforce service provider, AEL grant recipient, AEL service provider, or Agency grantee responses to the observations, findings, and recommendations.

(1) Management Letter. If there are no findings (i.e., administrative findings and/or questioned costs), a management letter is issued.

(2) Draft Monitoring Report. If there are findings, a draft monitoring report is issued, which sets forth a specified period in which to respond.

(3) Final Monitoring Report. A final monitoring report is issued, which may include responses to the findings and recommendations.

(b) Initial Resolution. Based on the final monitoring report, the Agency's audit resolution department shall issue an initial resolution, which notifies a Board, workforce service provider, AEL grant recipient, AEL service provider, or Agency grantee of administrative findings and questioned costs and a specific time period for response.

(1) Administrative Findings.

(A) If the administrative findings set forth in the initial resolution are resolved, a closure letter is issued.

(B) If the administrative findings set forth in the initial resolution are not resolved, the findings remain open until the following year's audit to ensure follow-up.

(2) Questioned Costs.

(A) If the questioned costs set forth in the initial resolution are resolved, a closure letter is issued.

(B) If the questioned costs set forth in the initial resolution are not resolved, an initial determination is issued.
(c) Initial Determination. The Agency's audit resolution department shall issue an initial determination notifying a Board, workforce service provider, AEL grant recipient, AEL service provider, or Agency grantee of the following:

1. The unresolved questioned costs; and
2. The 60-day period, from issuance of the initial determination, to submit a response, including providing evidence or documentation of the appropriate actions taken.

(d) Final Determination. If the questioned costs remain unresolved at the end of the 60-day period, the Agency's audit resolution department shall issue a final determination to notify a Board, workforce service provider, AEL grant recipient, AEL service provider, or Agency grantee of allowed or disallowed costs and to establish debts.

(e) If the administrative findings or questioned costs remain unresolved, the Agency's Regulatory Integrity Division may request a sanction, as set forth in §802.125 of this chapter (relating to Sanction Determination).

(f) Appeal Process

1. Only final determinations regarding questioned costs issued by the Agency may be appealed, pursuant to §802.142 of this chapter (relating to Appeal).
2. Failure by a Board, workforce service provider, AEL grant recipient, AEL service provider, or Agency grantee to timely request a hearing waives the right to a hearing. The final determination shall constitute final Agency action and is not subject to further review.
3. If an appeal is requested and approved, a hearing officer is designated and the collection of debt is pending until final decision of the hearing.

§802.66. Access to Records.

(a) Right of Access

1. Agency. All books, documents, papers, computer records, or other records prepared by Boards, workforce service providers, AEL grant recipients, AEL service providers, or Agency grantees that are pertinent to the use of any funds administered by the Agency are Agency property. Boards, workforce service providers, AEL grant recipients, AEL service providers, or Agency grantees in possession of such records shall be responsible for their secure and proper maintenance. The Agency or its authorized representatives have the right of timely and unrestricted access to any such records in order to conduct
monitoring, audits, and examinations, and to make excerpts, transcripts, and photocopies of such documents.

(2) Board, AEL grant recipient, or Agency grantee. A Board or its authorized representatives, AEL grant recipient or its authorized representative, and an Agency grantee or its executive leadership, have the right of timely and unrestricted access to any books, documents, papers, computer records, or other records of workforce service providers or AEL service providers, that are pertinent to the use of any funds administered by the Agency, in order to conduct monitoring, audits, and examinations; and to make excerpts, transcripts, and photocopies of such documents.

(b) The right of access also includes timely and unrestricted access to Board, workforce service provider, AEL grant recipient, AEL service provider, and Agency grantee personnel for the purpose of interviews and discussions related to such documents.

(c) The right of access is not limited to any required record retention period but shall last as long as the records are retained.

(d) When a Board's or AEL grant recipient's relationship with the workforce service provider or AEL service provider is terminated, the Board's or AEL grant recipient's responsibility for maintenance and retention of records as well as the Agency's right to access does not end.

(e) Custody of Records.

(1) The Agency, Board, or AEL grant recipient may request custody of records if one determines that:

(A) the records possess long-term retention value; or

(B) the workforce service provider or AEL service provider is unable or unwilling to physically retain them.

(2) The Agency may request custody of records from an Agency grantee if the Agency determines that:

(A) the records possess long-term retention value; or

(B) the Agency grantee is unable or unwilling to physically retain them.

(f) To comply with single audit requirements:

(1) the workforce service provider or AEL service provider shall retain the right of access to records in the custody of the Agency or the Board; and
(2) the Agency grantee shall retain the right of access to records in the custody of the Agency.

Subchapter E. Board, Workforce Service Provider, and AEL Grant Recipient Monitoring Activities

§802.81. Scope and Purpose.

(a) The purpose of this subchapter is to set forth the provisions governing the monitoring responsibilities of Boards, workforce service providers, and AEL grant recipients.

(b) The rules contained in this subchapter apply in addition to any program-specific rules to all programs administered by the Agency, except that to the extent of any conflict, the program-specific rule will govern.

§802.82. Board, Workforce Service Provider, and AEL Grant Recipient Monitoring.

(a) Boards, workforce service providers, and AEL grant recipients shall ensure that regular oversight of their own activities and regular monitoring of the activities of their workforce service providers and AEL service providers that receive public funds administered by the Agency, are conducted and completed. Monitoring shall include monitoring of both the fiscal and program performance of the workforce service providers and AEL service providers administering and delivering services. These monitoring activities shall be designed to ensure programs achieve intended results and resources are efficiently and effectively used for authorized purposes and are protected from waste, fraud, and abuse. Monitoring activities shall be planned to focus on areas of highest risk to help ensure the most effective use of monitoring resources.

(b) Monitoring activities shall assess a workforce service provider's and AEL service provider's compliance with applicable laws, regulations, provisions of contracts and Board plans, and official directives and circulars including, but not limited to, DOL Training and Employment Guidance Letters, DOL Training and Employment Notices, U.S. Department of Health and Human Services guidance letters, U.S. Department of Education Office of Vocational and Adult Education guidance, Commission rules contained in Part 20 of this title, Texas Workforce Commission WD Letters and AEL Letters, the Agency's Financial Manual for Grants and Contracts, and other Agency guidance. The Board and AEL grant recipient shall assess the workforce service provider's and AEL service provider's compliance with the appropriate uniform administrative requirements for grants and agreements applicable to the type of entity receiving funds, as promulgated in OMB circulars or rules. These activities shall encompass both financial and programmatic monitoring and shall be evaluated on a periodic basis. Each Board, workforce service provider,
and AEL grant recipient shall conduct regular oversight and monitoring of its workforce service providers or AEL service providers in order to:

1. determine that expenditures have been charged to the cost categories and within the cost limitations specified in the applicable laws and regulations;
2. determine whether or not there is compliance with other provisions of applicable laws and regulations; and
3. provide technical assistance as necessary and appropriate.

(c) The monitoring function shall include the development and implementation of:

1. a risk assessment tool;
2. a monitoring plan;
3. a monitoring program, including established policies and procedures; and
4. reporting and resolution processes.

(d) The Board and workforce service provider, or the AEL grant recipient and AEL service provider, shall develop and implement written policies and procedures that describe and support the monitoring process.

§802.83. Risk Assessment.

(a) Boards, workforce service providers, and AEL grant recipients shall include the use of a risk assessment tool in their monitoring functions.

(b) The risk assessment tool shall identify high-risk workforce service providers and AEL service providers and high areas of risk within an individual workforce service provider's or AEL service provider's operation. The entity responsible for including the risk assessment tool in its monitoring functions shall be responsible for determining what constitutes high risk or an area of high risk.

(c) Boards, workforce service providers, and AEL grant recipients shall establish monitoring schedules and monitoring programs that best use monitoring resources. Boards, workforce service providers, and AEL grant recipients shall quantify, as much as possible, and document areas of risk identified for assessment.

§802.84. Monitoring Plan.

(a) Boards, workforce service providers, and AEL grant recipients shall develop their own local-level monitoring plan based on the results of the risk assessment. This monitoring plan shall incorporate the following:
(1) a schedule or timetable for monitoring Agency-funded activities; and

(2) identification of the type of review planned, such as on-site review, comparative financial analysis, desk review, staff analysis, or other type of appropriate review.

(b) Boards, workforce service providers, and AEL grant recipients may perform monitoring reviews either formally or informally, but shall incorporate the risk assessment results in scheduling decisions.

§802.85. Controls over Monitoring.

To ensure comprehensive and effective monitoring, Boards, workforce service providers, and AEL grant recipients shall:

(1) require periodic reports from their workforce service providers or AEL service providers outlining monitoring reviews, noncompliance issues, and the status of corrective actions;

(2) ensure that a briefing regarding monitoring activities and findings is provided to the Board or appropriate Board subcommittee at regularly scheduled meetings, or to AEL consortium members, as applicable;

(3) require an annual evaluation of the monitoring function to determine its effectiveness, by a person or entity independent of the monitoring function; and

(4) develop a written monitoring procedure to be used in monitoring both program and fiscal operations.

§802.86. Reporting and Resolution Requirements.

(a) Boards, workforce service providers, and AEL grant recipients shall ensure that monitoring reports identify instances of noncompliance with federal and state laws and regulations and Agency policies, and provide recommendations for corrective action and program quality enhancements.

(b) Boards, workforce service providers, and AEL grant recipients shall ensure that timelines are established for the completion of corrective actions, based on the severity of the deficiency, and shall work with the workforce service providers or AEL service providers to ensure implementation of corrective actions.
(c) Boards, workforce service providers, and AEL grant recipients shall ensure that a copy of monitoring reports is provided to Board members or AEL consortium members.

§802.87. Independent Audit Requirements.

Boards, workforce service providers, AEL grant recipients, AEL service providers, and Agency grantees are subject to the following and shall ensure that an annual audit or program-specific audit is obtained in accordance with the following:

(1) Single Audit Act Amendments of 1996 (Public Law 104-156);
(2) OMB Circular A-133 and Compliance Supplement;
(3) OMB Circular A-21;
(4) OMB Circular A-110;
(5) Government Auditing Standards (U.S. Government Accountability Office); and
(6) State of Texas Single Audit Circular within the Uniform Grant Management Standards Act (Texas Government Code, Chapter 783).

Subchapter F. Performance and Accountability

§802.101. Scope and Purpose.

(a) The purpose of this subchapter is to:

(1) ensure accountability of Boards, workforce service providers, AEL grant recipients, AEL service providers, and Agency grantees, in meeting the needs of Workforce Solutions customers;

(2) ensure performance targets are met or exceeded; and

(3) describe the Commission policies for noncompliance.

(b) The Agency may review financial, administrative, and performance data to evaluate a Board, workforce service provider, AEL grant recipient, AEL service provider, or Agency grantee to determine the need for sanctions.

(c) To accomplish the purposes of this subchapter, the Agency may require at any point during the year that a Board, workforce service provider, AEL grant recipient, AEL service provider, or Agency grantee cooperates with remedial actions, including, but
not limited to, entering into a technical assistance plan and other performance review
and assistance activities.

§802.102. Performance Requirements and Expectations.

(a) A Board or AEL grant recipient shall meet or exceed expenditure and performance
targets as set forth in its contracts. The Commission shall determine the Boards' or
AEL grant recipients' performance targets based on federal and state performance
standards and by using factors that may be necessary to achieve the mission of the
Commission and reflect local conditions. The Commission approves individual
Board or AEL grant recipient performance targets annually, which may be adjusted
based on local conditions including, but not limited to, specific economic conditions
and demographic characteristics of the workforce area.

(b) An Agency grantee shall meet or exceed expenditure and performance targets as set
forth in its contracts.

(c) A Board, AEL grant recipient, and Agency grantee shall comply with the following:

(1) applicable laws, regulations, provisions of contracts and Board plans, and
official directives and circulars including, but not limited to, DOL Training and
Department of Health and Human Services guidance letters, U.S. Department
of Education Office of Vocational and Adult Education guidance, Commission
rules contained in Part 20 of this title, Texas Workforce Commission WD
Letters and AEL Letters, the Agency's Financial Manual for Grants and
Contracts, and other Agency guidance;

(2) appropriate uniform administrative requirements for grants and agreements
applicable for the type of entity receiving funds as promulgated in OMB's
Uniform Grant Management Standards circulars or rules; and

(3) Agency-Board agreements and applicable program contracts.

(d) A Board's or AEL grant recipient's achievement of high levels of performance may
result in the Commission providing incentives for the Board as set forth in
Subchapter I of this chapter (relating to Incentive Awards). In addition, the
Commission may adopt additional performance incentives.

(e) The failure of Boards, AEL grant recipients, or Agency grantees to meet minimum
levels of performance as referenced in their contracts may result in corrective
actions, other performance review and assistance activities, or sanctions as specified
in:

(1) Part 20 of this title, including this chapter;
(2) the contract with the Agency; or

(3) federal or state statute or rule.

(f) A Board or AEL grant recipient may submit to the Commission a request for a performance target adjustment in the format prescribed by the Agency.

(g) The Commission may determine what constitutes a necessary adjustment to local performance targets and may consider specific economic conditions and demographic characteristics to be served in the workforce area and other factors the Commission deems appropriate including the anticipated impact of the adjustment on the state's performance.

§802.103. Performance Review and Assistance.

(a) The Commission's intent is to define the role of performance review and assistance provided by the Agency. The role of performance review and assistance is to work with Boards, workforce service providers, AEL grant recipients, AEL service providers, and Agency grantees to:

(1) ensure successful service delivery outcomes; and

(2) provide accountability through technical assistance and contract management.

(b) The Agency offers a sequence of interventions including the development of technical assistance plans, on-site reviews, staff training, and continued contract management and oversight.

(c) Boards, workforce service providers, AEL grant recipients, AEL service providers, and Agency grantees shall ensure cooperation and compliance with the Agency's performance review and assistance activities and services.

§802.104. Performance Improvement Actions.

(a) The Agency may assist Boards, workforce service providers, AEL grant recipients, AEL service providers, and Agency grantees with strategies for improving compliance or performance.

(b) A technical assistance plan, which may be jointly developed by the Agency with Boards, AEL grant recipients, or Agency grantees, may include, but is not limited to:

(1) identification of one or more specific performance improvement issues;

(2) assessment of specific technical assistance or training needs;
(3) selection of one or more specific technical assistance or training activities to be implemented;

(4) identification of the appropriate entities to provide the technical assistance or training, including the Board, AEL grant recipient, the Agency, other Boards, or other entities;

(5) identification of a timeline for completion of the technical assistance or training; and

(6) specific dates for reassessment of technical assistance or training needs and completion of the specific technical assistance or training.

**Subchapter G. Corrective Actions**

§802.121. Imposition of Corrective Actions and Corrective Action Plans.

(a) At any time, the Agency may impose corrective actions for failure by a Board, AEL grant recipient, or Agency grantee to ensure compliance with the following:

(1) one or more contracted performance measures;

(2) one or more contract provisions; or

(3) one or more of the items listed in §802.102(c) of this chapter.

(b) The Agency may impose corrective actions for failure by a Board, AEL grant recipient, or Agency grantee to appropriately oversee of the delivery of services and ensure the effective and efficient use of funds.

(c) Failure to cooperate and comply with the Agency’s performance improvement actions, including technical assistance plans, may subject a Board, AEL grant recipient, or Agency grantee to corrective actions.

(d) The Agency may impose, in nonsequential order, the following corrective actions on a Board, AEL grant recipient, or Agency grantee:

(1) Intent to Sanction

(2) Level-One Sanction

(3) Level-Two Sanction

(4) Level-Three Sanction
(e) The Agency may impose a higher level of sanction on a Board, AEL grant recipient, or Agency grantee, if a sanction is currently imposed when another sanctionable act occurs or is discovered.

(f) Corrective Action Plan. To assist in correcting any deficiencies, a Board, AEL grant recipient, or Agency grantee upon whom an intent to sanction or a sanction is imposed must enter into a corrective action plan. A corrective action plan is developed by the Agency and may include the elements of a technical assistance plan, as outlined in §802.104(b) of this chapter. In addition, the Agency may require:

1. participation in technical and quality assurance activities;
2. mandatory participation in training;
3. on-site visits by the Agency to oversee and assist with daily operations of a Board, AEL grant recipient, or Agency grantee;
4. submission of additional or more detailed financial or performance reports;
5. modification of the Board's local plan;
6. issuing a notice of intent to revoke all or part of the affected local plan;
7. designation as a high-risk Board, AEL grant recipient, or an Agency grantee requiring additional monitoring visits;
8. appearances by the Board's executive director, other administrative officer, the Agency grantee's executive leadership, or the AEL grant recipient's chief executive officer to report on activities and progress in Commission meetings until performance is satisfactory;
9. meetings with the workforce area's chief elected officials, Board chair, Board members, Board executive director, AEL grant recipient's chief executive officer, AEL consortium members, or Agency grantee's executive leadership;
10. formal Agency presentation to chief elected officials, Board members, AEL grant recipient's chief executive officer, AEL consortium members, or Agency grantee's executive leadership;
11. Agency oversight and management of problem situations, such as the appointment of a steward;
12. Agency approval of specified Board, AEL grant recipient, or Agency grantee actions (i.e., prohibition against entering into specific contracts or engaging in certain activities without explicit prior approval of the Agency);
(13) prohibition against a Board or AEL grant recipient using designated workforce
service providers or AEL service providers, including state agencies and
Workforce Solutions Office operators;

(14) payment by reimbursement only, with required supporting documentation;

(15) delay, suspension, or denial of contract payments;

(16) reduction or deobligation of funds;

(17) ineligibility for additional discretionary or other funds, including incentive

awards;

(18) contract cancellation or termination; and

(19) other actions deemed appropriate by the Agency to assist the Board, AEL grant
recipient, or Agency grantee in correcting deficiencies.

§802.122. Intent to Sanction.

(a) The Agency may issue an intent to sanction to set forth:

(1) a corrective action plan and performance review and assistance activities;

(2) a specific timeline for the implementation of the corrective action plan by a
Board, AEL grant recipient, or Agency grantee; and

(3) an opportunity to cure the sanctionable acts.

(b) There shall be no appeal to an intent to sanction.

§802.123. Sanctions.

(a) Level-One Sanction. The Agency may impose a level-one sanction on a Board, AEL
grant recipient, or Agency grantee for sanctionable acts. Sanctionable acts that occur
during the program, grant, fiscal, contract, or calendar year include, but are not
limited to, the following:

(1) failure to submit timely and accurate required financial or performance reports;

(2) failure to take corrective actions to resolve findings identified during
monitoring, investigative, or program reviews, including failure to comply
with a technical assistance plan developed by the Agency;
(3) failure to rectify or resolve all independent audit findings or questioned costs within required time frames;

(4) failure to submit required annual audits;

(5) breach of administrative and service contract requirements;

(6) failure to retain required service delivery and financial records; or

(7) failure to meet the target on any contracted performance measure by more than 10 percent of target.

(b) Level-Two Sanction. The Agency may impose a level-two sanction on a Board, AEL grant recipient, or Agency grantee for sanctionable acts. Sanctionable acts that occur during the program, grant, fiscal, contract, or calendar year include, but are not limited to, the following:

(1) failure to rectify a level-one sanction within six months of notice;

(2) committing a second sanctionable act;

(3) failure to rectify reported threats to health and safety of program participants within 30 days of notice. Rectifying health and safety may include investigating a complaint, taking appropriate corrective actions, or making referrals to appropriate authorities; or

(4) failure to meet the target on any contracted performance measure by more than 25 percent of target.

(c) Level-Three Sanction. The Agency may impose a level-three sanction on a Board, AEL grant recipient, or Agency grantee for sanctionable acts. Sanctionable acts that occur during the program, grant, fiscal, contract, or calendar year include, but are not limited to, the following:

(1) failure to rectify a level-one sanction within one year of notice;

(2) failure to rectify a level-two sanction within six months of notice;

(3) committing multiple sanctionable acts;

(4) failure to rectify reported threats to health and safety of program participants within 60 days of notice. Rectifying health and safety may include investigating a complaint, taking appropriate corrective action, or making referrals to appropriate authorities; or
(5) failure to meet the target on any contracted measure by more than 25 percent of target for two consecutive years.

§802.124. Penalties for Noncompliance with Requirements.

(a) The Agency may impose penalties on a Board, AEL grant recipient, or Agency grantee based on the following criteria as determined appropriate by the Agency given the totality of the circumstances surrounding the occurrence of the sanctionable act or acts:

(1) Severity, nature, duration, and extent;

(2) Previous occurrences of sanctionable acts; and

(3) Efforts by the Board, workforce service provider, AEL grant recipient, AEL service provider, or Agency grantee to prevent the occurrence of the sanctionable act, including efforts to:

(A) obtain technical assistance, training, or other assistance from the Agency;

(B) resolve monitoring findings; and

(C) prevent potential sanctionable acts.

(b) The Agency may impose penalties for sanctionable acts listed in this subchapter. Notwithstanding the list of sanctionable acts appearing after each specific level of sanction in §802.123 of this subchapter, the Agency may assign a higher or lower sanction level based on the severity or mitigating circumstances surrounding the sanctionable acts.

(c) The Commission may recommend to TWIC pursuant to Texas Government Code, Chapter 2308, that one or more of the following be imposed on Boards:

(1) A reorganization plan under Texas Government Code §2308.268 for the workforce area;

(2) A restructuring of the Board, including decertification of the current Board and appointment and certification of a new Board;

(3) A merger of the workforce area into one or more other workforce areas; or

(4) Any other penalty deemed appropriate by the Commission.

(d) More than one corrective action may be imposed in response to one occurrence of a sanctionable act. The corrective actions imposed for one or more occurrences of
sanctionable acts may correlate with the sanction level imposed on a Board, AEL grant recipient, or Agency grantee.

(e) Failure by a Board, AEL grant recipient, or Agency grantee to complete the corrective actions described in this subchapter within the specified time limits may result in the Agency imposing penalties under this subchapter and withholding contract payments to the Board, AEL grant recipient, or Agency grantee.

(f) Penalties for Second-Year WIA Nonperformance. If a Board fails to meet its targets on 25 percent of its contracted measures by more than 20 percent of target for two consecutive program years, the Commission shall review the performance deficiencies and shall make a recommendation to TWIC that it impose a reorganization plan for the workforce area. The Commission's recommendation to TWIC for reorganization of a workforce area may include one or more of the corrective actions or penalties included in this subchapter. Notwithstanding this subsection, the Commission may take other action deemed appropriate as consistent with federal law.

(g) Penalties for Failures Regarding the One-Stop Service Delivery Network. Failure of a Board to ensure the continued operation of a one-stop service delivery network as required by WIA §121 and Chapter 801, Subchapter B, One-Stop Service Delivery Network of this title, including failure to properly certify Workforce Solutions Offices as defined in §801.24 of this title, may result in the imposition of penalties as provided in this subchapter, and the Agency's withholding of payment for any administrative expenses until the Board demonstrates to the satisfaction of the Agency that all of the required elements of a one-stop service delivery network are operational.

§802.125. Sanction Determination.

(a) The director of Agency's Workforce Development Division determines whether a sanction shall be imposed, including whether it is appropriate to impose a sanction level on the Board, AEL grant recipient, or Agency grantee and whether it is appropriate to assign a penalty.

(b) The Commission shall work in concert with TWIC, as appropriate, to impose sanctions as required by Texas Government Code §2308.268 and §2308.269.

(c) The Agency shall send a written notice of sanction determination (sanction determination) to the following:

(1) Board:

(A) The Board's executive director or administrative officer;

(B) The Board's chair; and
(C) The lead chief elected official of the workforce area; or

(2) The AEL grant recipients’ or Agency grantees’ executive leadership.

(d) The sanction determination date of notice shall be the date the sanction
determination is sent by certified mail. All sanction determinations shall be sent by
electronic transmission and by certified mail, return receipt requested.

(e) The sanction determination shall include the following information:

(1) the sanctionable act upon which the sanction was based;

(2) the sanction level in which the Board, AEL grant recipient, or Agency grantee
is placed and the conditions under which the sanction may be removed;

(3) the penalty and the effective date of the penalty;

(4) the corrective action required, including the timeline for completing the
corrective action; and

(5) the technical assistance contact from the Agency or other entity to assist in
completing the corrective action.

(f) The Agency shall send the sanction determination at least 10 working days in
advance of the effective date of the sanction.

**Subchapter I. Incentive Awards**

§802.161. Scope and Purpose.

The purpose of incentive awards is to reward Boards or AEL grant recipients that meet or
exceed the performance benchmarks identified in each incentive award and accomplish
the Commission's goals to fulfill the workforce needs of employers and to put Texans to
work. The Board and AEL grant recipient are responsible for providing strategic and
operational planning for its workforce area. The development of an integrated and
coherent workforce development system at the local level is the primary focus of Boards.
Thus, this policy seeks to recognize Boards or AEL grant recipients for achieving high
performance as a system, as well as high performance on behalf of employers and the
populations annually targeted by the Commission during the budget process. Incentives
will emphasize accountability, high performance, and continuous improvement and
support the state in achieving workforce development goals.
§802.162. Definitions.

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

(1) Allocation of Funds--The total yearly funds initially identified for allocation to a workforce area for all programs. This does not include consideration of adjustments in funding made to a specific program(s) by the Commission for purposes of reallocating or redistributing those funds. This may include new allocations or distributions made during a year that result from changes in law or new funding made available to the workforce areas during a year.

(2) Classification--Grouping of Boards or AEL grant recipients with one or more common characteristics (e.g., size) for the purpose of evaluating performance and giving incentive awards.

(3) Extraordinary Circumstances--Conditions that may have an impact on the determination of which Boards or AEL grant recipients may receive or be excluded from receiving incentive awards, which may include, but are not limited to, matters such as serious unforeseen events, unresolved audit or monitoring findings, sanctions, unanticipated changes in economic conditions, the occurrence of a disaster, or legislative changes having a direct impact on the Commission, Boards, or AEL grant recipients.

(4) Local Coordination--Boards fostering leadership and cooperation to achieve the most effective customer service results for their employers and residents through one or more of the following:

   (A) Memoranda of Understanding with required partners that achieve active implementation and integration of related services;

   (B) Memoranda of Understanding with partners required by WIA §121(b)(1) but not required by §801.27(b) of this title that include active implementation and integration of related services;

   (C) ongoing and regular communication and training on the best practices and benchmarks in building systems or delivering services; or

   (D) demonstrating local coordination through other means as determined by the Commission, such as by demonstrating coordination with demonstration grants, youth opportunity grants, self-sufficiency grants, and skills development grants.
Regional Cooperation--Boards working together as a cooperative unit in a region to provide excellence in customer service through one or more of the following:

(A) submitting joint plans or agreements;

(B) engaging in ongoing and regular communication regarding the best practices and working together to implement those practices by sharing ideas, data, staff, and other resources;

(C) providing opportunities for joint training, conferences, and staff interaction; or

(D) demonstrating regional cooperation through other means as determined by the Commission.

Workforce development programs--Job-training, employment, and employment-related educational programs and functions as listed in Texas Labor Code §302.021.

§802.164. Data Collection.

(a) Boards and AEL grant recipients are responsible for complete and accurate data entry prior to Commission-established deadlines.

(b) The Commission reserves the right not to consider data submitted after the deadline or data that it finds to be inaccurate in its evaluation of performance for awards.

§802.169. AEL Incentive Awards.

(a) The Commission may issue monetary and nonmonetary awards to AEL grant recipients, which may be awarded annually based on high-performance achievement or continuous improvement in meeting performance measures:

(1) The Commission may determine the amount of funds for use to reward performance annually.

(2) The Commission may use any combination of existing state or federal performance measures and may develop its own measures to evaluate performance.

(3) If the Commission includes a measure that does not have a target, the Commission may:
(A) set an incentive target for the sole purpose of evaluating eligible AEL grant recipients for the incentive awards (failure to meet an incentive target does not subject AEL grant recipients to sanction); or

(B) rate performance based on each AEL grant recipient's "relative improvement" in performance from the prior year.

(b) The Commission may use a measure and a subset of a measure in the same year.

(c) If the Commission is considering issuing awards under this section, the Commission shall notify AEL grant recipients of the method by which performance shall be evaluated for the purpose of giving awards under this rule for that year.

(1) The notice required under this subsection shall be provided to the AEL grant recipients concurrent with their yearly contracts.

(2) The notice may include:

(A) a listing of awards;

(B) a listing of the performance measures to be included in each evaluation category including:

   (i) the period of evaluation for each performance measure; and

   (ii) the method of evaluation for each performance measure;

(C) the weightings to be used to aggregate the performance measures to allow each AEL grant recipient's overall performance to be ranked;

(D) the anticipated amount of funds available to be awarded; and

(E) other criteria to be used to identify superior performance.

(d) AEL grant recipients that receive a performance award shall use the incentive award to carry out AEL activities as allowed by state and federal laws.

(e) The Commission may modify the assignment of awards based on factors that the Commission identifies as extraordinary circumstances.