

1 **CHAPTER 802. INTEGRITY OF THE TEXAS WORKFORCE SYSTEM**

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

7 **ON SEPTEMBER 15, 2020, THE TEXAS WORKFORCE COMMISSION PROPOSED THE**  
8 **RULES BELOW WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.**  
9

10 Estimated Publication Date of the Proposal in the *Texas Register*: **October 2, 2020**  
11 Estimated End of Comment Period: **November 2, 2020**  
12

13 The Texas Workforce Commission (TWC) proposes amendments to the following sections of  
14 Chapter 802, relating to the Integrity of the Texas Workforce System:  
15

16 Subchapter I. Workforce Awards, §§802.161 - 802.163 and §802.165  
17

18 TWC proposes the repeal of the following sections of Chapter 802, relating to the Integrity of the  
19 Texas Workforce System:  
20

21 Subchapter I. Workforce Awards, §802.164 and §§802.166 - 802.169  
22

23 TWC proposes the following new section to Chapter 802, relating to the Integrity of the Texas  
24 Workforce System:  
25

26 Subchapter I. Workforce Awards, §802.166 and §802.167  
27

- 28 PART I. PURPOSE, BACKGROUND, AND AUTHORITY
- 29 PART II. EXPLANATION OF INDIVIDUAL PROVISIONS
- 30 PART III. IMPACT STATEMENTS
- 31 PART IV. COORDINATION ACTIVITIES

32  
33 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

34 The purpose of the proposed Chapter 802 rule change is to amend Subchapter I.  
35

36 Subchapter I describes the process through which TWC's three-member Commission  
37 (Commission) may establish monetary and nonmonetary awards to encourage, recognize, and  
38 reward the innovative efforts and exceptional performance of Local Workforce Development  
39 Boards (Boards) and Adult Education and Literacy (AEL) grant recipients in serving Texas  
40 workforce system customers.  
41

42 The rules in Chapter 802, Subchapter I have been in place since February 2011. The services  
43 administered by TWC have since expanded, and federal regulations authorizing many of TWC's  
44 programs have changed. Chapter 802 rule amendments were last adopted in February 2014 to  
45 address the transfer of the AEL program in 2013 and included provisions related to incentive  
46 awards. Additionally, in 2014, the president signed into law the Workforce Innovation and

1 Opportunity Act (WIOA), which repealed and replaced the Workforce Investment Act of 1998  
2 (WIA). WIA required that states provide incentive grants to Boards as a required statewide  
3 activity. WIOA changed the classification of incentive grants from a required statewide activity  
4 to an allowable statewide activity. Finally, in 2016, the legislature dissolved the Texas  
5 Department of Assistive and Rehabilitative Services and transferred its workforce-related  
6 programs to TWC, thus creating TWC's Vocational Rehabilitation Division.

7  
8 Those changes are just a few examples of how the Texas workforce system has evolved into a  
9 more robust, integrated, and dynamic network comprising many partners, including Boards, AEL  
10 grant recipients, community colleges, and employers. The awards process has also evolved and  
11 must remain flexible to ensure its relevance in encouraging, recognizing, and rewarding  
12 workforce system partners for exceeding expectations and creating innovations in a dynamic and  
13 ever-changing environment.

14  
15 Subchapter I, "Incentive Awards" is renamed "Workforce Awards" to more accurately describe  
16 the amended subchapter's broader scope of recognizing Boards, AEL grant recipients, and other  
17 workforce system partners for their innovative contributions in exceeding workforce service-  
18 delivery goals and objectives.

19  
20 Subchapter I is also amended to clarify that the Commission has the authority to issue any award  
21 in accordance with the award's programmatic and funding-source requirements.

22  
23 Additionally, Subchapter I is amended to specify that funding for any monetary award must  
24 comply with the requirements associated with the award's funding authority.

## 25 26 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

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

### 29 30 **SUBCHAPTER I. WORKFORCE AWARDS**

#### 31 **TWC proposes the following amendments to Subchapter I:**

##### 32 33 **§802.161. Scope and Purpose**

34 Section 802.161 is amended to reflect the current and broader purpose and scope of the  
35 workforce awards.

##### 36 37 **§802.162. Definitions**

38 Section 802.162 is amended to remove definitions no longer relevant under WIOA, add  
39 definitions for "Workforce Awards" and "Workforce System Partner," and clarify remaining  
40 definitions.

##### 41 42 **§802.163. Types of Workforce Awards**

43 Section 802.163 is retitled "Types of Workforce Awards" and amended to prescribe the  
44 Commission's authority to determine which awards will be issued; what, if any, monetary  
45 amounts will be offered for awards; and whether an award's criteria will be based on  
46 performance data, application, nomination, any combination thereof, or another manner. The

1 amended language also gives the Commission flexibility to modify or remove an award at any  
2 time. Amended §802.163 incorporates relevant information pertaining to performance awards  
3 from repealed §802.166, Performance Awards.

4  
5 **§802.164. Data Collection**

6 Section 802.164 is repealed because the section is no longer relevant to the workforce awards  
7 process.

8  
9 **§802.165. Workforce Awards Recipient Classification**

10 Section 802.165 is amended to remove language exclusive to Boards and add language to  
11 incorporate other workforce system partners for potential awards eligibility.

12  
13 **§802.166. Performance Awards**

14 Section 802.166 is repealed because it contains provisions that were required under WIA that are  
15 not required under WIOA. Information pertaining to performance awards is now addressed under  
16 amended §802.163.

17  
18 **§802.166. Notification**

19 New §802.166 requires TWC to provide notification to Boards, AEL grantees, and other  
20 workforce system partners, as applicable, pertaining to the annual workforce awards and sets  
21 forth a deadline for providing the notification.

22  
23 **§802.167. Workforce Investment Act Local Incentive Awards**

24 Section 802.167 is repealed because WIA and its provisions requiring states to provide incentive  
25 grants have been repealed. WIOA, which replaced WIA, does not include the incentive grants  
26 requirement.

27  
28 **§802.167. Extraordinary Circumstances**

29 New §802.167 sets forth the Commission's authority to modify eligibility for and assignment of  
30 awards under extraordinary circumstances as defined in Chapter 802, Subchapter I.

31  
32 **§802.168. Job Placement Incentive Awards**

33 Section 802.168 is repealed because amended §802.163 provides the Commission with the  
34 authority to determine types of awards so rules for specific awards are no longer necessary.

35  
36 **§802.169. AEL Incentive Awards**

37 Section 802.169 is repealed because AEL awards no longer require a separate distinction because  
38 amended §802.163 provides the Commission with the authority to designate types of awards so  
39 rules for specific awards are no longer necessary.

40  
41 **PART III. IMPACT STATEMENTS**

42 Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the  
43 rules will be in effect, the following statements will apply:

44  
45 There are no additional estimated costs to the state and to local governments expected as a result  
46 of enforcing or administering the rules.

1  
2 There are no estimated cost reductions to the state and to local governments as a result of  
3 enforcing or administering the rules.

4  
5 There are no estimated losses or increases in revenue to the state or to local governments as a  
6 result of enforcing or administering the rules.

7  
8 There are no foreseeable implications relating to costs or revenue of the state or local  
9 governments as a result of enforcing or administering the rules.

10  
11 There are no anticipated economic costs to individuals required to comply with the rules.

12  
13 There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural  
14 communities as a result of enforcing or administering the rules.

15  
16 Based on the analyses required by Texas Government Code, §2001.024, TWC has determined  
17 that the requirement to repeal or amend a rule, as required by Texas Government Code,  
18 §2001.0045, does not apply to this rulemaking.

19  
20 Takings Impact Assessment

21 Under Texas Government Code, §2007.002(5), "taking" means a governmental action that  
22 affects private real property, in whole or in part or temporarily or permanently, in a manner that  
23 requires the governmental entity to compensate the private real property owner, as provided by  
24 the Fifth and Fourteenth Amendments to the United States Constitution or the Texas  
25 Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that  
26 would otherwise exist in the absence of the governmental action, and is the producing cause of a  
27 reduction of at least 25 percent in the market value of the affected private real property,  
28 determined by comparing the market value of the property as if the governmental action is not in  
29 effect and the market value of the property determined as if the governmental action is in  
30 effect. The Commission completed a Takings Impact Analysis for the proposed rulemaking  
31 action under Texas Government Code, §2007.043. The primary purpose of this proposed  
32 rulemaking action, as discussed elsewhere in this preamble, is to amend Chapter 802, Subchapter  
33 I.

34  
35 The proposed rulemaking action will not create any additional burden on private real property or  
36 affect private real property in a manner that would require compensation to private real property  
37 owners under the US Constitution or the Texas Constitution. The proposal also will not affect  
38 private real property in a manner that restricts or limits an owner's right to the property that  
39 would otherwise exist in the absence of the governmental action. Therefore, the proposed  
40 rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

41  
42 Government Growth Impact Statement

43 TWC has determined that during the first five years the amendments will be in effect:  
44 --the amendments will not create or eliminate a government program;  
45 --implementation of the amendments will not require the creation or elimination of employee  
46 positions;

- 1 --implementation of the amendments will not require an increase or decrease in future legislative
- 2 appropriations to TWC;
- 3 --the amendments will not require an increase or decrease in fees paid to TWC;
- 4 --the amendments will not create a new regulation;
- 5 --the amendments will not expand, limit, or eliminate an existing regulation;
- 6 --the amendments will not change the number of individuals subject to the rules; and
- 7 --the amendments will not positively or adversely affect the state's economy.

8

9 Economic Impact Statement and Regulatory Flexibility Analysis

10 TWC has determined that the rules will not have an adverse economic impact on small

11 businesses or rural communities, as these rules place no requirements on small businesses or

12 rural communities.

13

14 Mariana Vega, Director, Labor Market and Career Information, has determined that there is no

15 impact upon employment conditions in the state as a result of the rules.

16

17 Courtney Arbour, Director, Workforce Development Division, has determined that for each year

18 of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing

19 the rules will be to provide updated and clearly specified rules for administering the issuance of

20 workforce awards.

21

22 TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be

23 within TWC's legal authority to adopt.

24

25 **PART IV. COORDINATION ACTIVITIES**

26 In the development of these rules for publication and public comment, TWC sought the

27 involvement of Texas' 28 Boards. TWC provided the concept paper regarding these rule

28 amendments to the Boards for consideration and review on March 17, 2020. TWC also

29 conducted a conference call with Board executive directors and Board staff on March 27, 2020,

30 to discuss the concept paper. During the rulemaking process, TWC considered all information

31 gathered in order to develop rules that provide clear and concise direction to all parties involved.

32

33 Comments on the proposed rules may be submitted to [TWCPolicyComments@twc.state.tx.us](mailto:TWCPolicyComments@twc.state.tx.us).

34 Comments must be received no later than 30 days from the date that this proposal is published in

35 the *Texas Register*.

36

37 The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide

38 TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the

39 effective administration of TWC services and activities.

40

41 The rules implement those provisions within WIOA for permissible statewide activities,

42 including, but not limited to, WIOA, §§128, 129, 133, and 134.

1                   **CHAPTER 802. INTEGRITY OF THE TEXAS WORKFORCE SYSTEM**

2  
3                   **SUBCHAPTER I. WORKFORCE ~~INCENTIVE~~ AWARDS**

4  
5                   **§802.161. Scope and Purpose.**

6  
7                   The purpose of the workforce awards is to allow the Agency's three-member Commission  
8                   (Commission) to establish monetary and nonmonetary awards to encourage innovation  
9                   and to recognize and reward Local Workforce Development Boards (Boards), Adult  
10                   Education and Literacy (AEL) grant recipients, and other Texas workforce system  
11                   partners for exceptional performance in carrying out the workforce system's obligation to  
12                   help Texas employers, employees, job seekers, and students succeed economically.  
13                   ~~The purpose of incentive awards is to reward Boards or AEL grant recipients that meet or~~  
14                   ~~exceed the performance benchmarks identified in each incentive award and accomplish~~  
15                   ~~the Commission's goals to fulfill the workforce needs of employers and to put Texans to~~  
16                   ~~work. The Board and AEL grant recipient are responsible for providing strategic and~~  
17                   ~~operational planning for its workforce area. The development of an integrated and~~  
18                   ~~coherent workforce development system at the local level is the primary focus of Boards.~~  
19                   ~~Thus, this policy seeks to recognize Boards or AEL grant recipients for achieving high~~  
20                   ~~performance as a system, as well as high performance on behalf of employers and the~~  
21                   ~~populations annually targeted by the Commission during the budget process. Incentives~~  
22                   ~~will emphasize accountability, high performance, and continuous improvement and~~  
23                   ~~support the state in achieving workforce development goals.~~

24  
25                   **§802.162. Definitions.**

26  
27                   The following words and terms when used in this chapter shall have the following  
28                   meanings, unless the context clearly indicates otherwise.

- 29  
30                   (1) Allocation of Funds--The total yearly funds initially identified for allocation to  
31                   a local development workforce area (workforce area) for all programs. This  
32                   does not include consideration of adjustments in funding that the Commission  
33                   made to ~~a specific programs~~program(s) by the Commission for the purposes of  
34                   reallocating or redistributing those funds. This may include new allocations or  
35                   distributions ~~made during a year~~ that result from changes in law or new  
36                   funding made available to the workforce areas during a the year.
- 37  
38                   (2) Classification--A grouping ~~Grouping~~ of Boards, ~~or~~ AEL grant recipients, or  
39                   other workforce system partners with one or more common characteristics  
40                   (e.g. for example, size) for the purpose of evaluating performance and issuing  
41                   incentive, quality--improvement, or other giving awards, as determined by the  
42                   Commission.
- 43  
44                   (3) Extraordinary Circumstances--Conditions that may have an impact on the  
45                   determination of which Boards, ~~or~~ AEL grant recipients, or other workforce  
46                   system partners may receive, or be excluded from receiving, workforce

1 ~~incentive~~ awards, which may include, but are not limited to, matters such as  
2 serious unforeseen events, unresolved audit or monitoring findings, sanctions,  
3 unanticipated changes in economic conditions, ~~the occurrence of a~~ disasters, ~~or~~  
4 legislative changes, or other occurrences directly impacting having a direct  
5 ~~impact on~~ the Commission, Boards, ~~or~~ AEL grant recipients, or the Texas  
6 workforce system.

7  
8 ~~(4) Local Coordination—Boards fostering leadership and cooperation to achieve~~  
9 ~~the most effective customer service results for their employers and residents~~  
10 ~~through one or more of the following:~~

11  
12 ~~(A) Memoranda of Understanding with required partners that achieve active~~  
13 ~~implementation and integration of related services;~~

14  
15 ~~(B) Memoranda of Understanding with partners required by WIA §121(b)(1)~~  
16 ~~but not required by §801.27(b) of this title that include active~~  
17 ~~implementation and integration of related services;~~

18  
19 ~~(C) ongoing and regular communication and training on the best practices~~  
20 ~~and benchmarks in building systems or delivering services; or~~

21  
22 ~~(D) demonstrating local coordination through other means as determined by~~  
23 ~~the Commission, such as by demonstrating coordination with~~  
24 ~~demonstration grants, youth opportunity grants, self-sufficiency grants,~~  
25 ~~and skills development grants.~~

26  
27 (4) Workforce Awards--Awards presented by the Commission to workforce  
28 system partners within the parameters of this subchapter to support activities  
29 allowable under programmatic funding sources.

30 ~~(5) Regional Cooperation—Boards working together as a cooperative unit in a~~  
31 ~~region to provide excellence in customer service through one or more of the~~  
32 ~~following:~~

33  
34 ~~(A) submitting joint plans or agreements;~~

35  
36 ~~(B) engaging in ongoing and regular communication regarding the best~~  
37 ~~practices and working together to implement those practices by sharing~~  
38 ~~ideas, data, staff, and other resources;~~

39  
40 ~~(C) providing opportunities for joint training, conferences, and staff~~  
41 ~~interaction; or~~

42  
43 ~~(D) demonstrating regional cooperation through other means as determined~~  
44 ~~by the Commission.~~

1           (5) Workforce System Partner--For the purposes of workforce awards, any entity  
2           that provides workforce services to workforce system customers.

3  
4           ~~(6) Workforce development programs—Job training, employment, and~~  
5           ~~employment related educational programs and functions as listed in Texas~~  
6           ~~Labor Code §302.021.~~

7  
8       **§802.163. Types of Workforce Awards.**

9  
10       The Commission shall determine:

11  
12           (1) awards to be issued, including award categories and names;

13  
14           (2) monetary amounts, if any, for each award in accordance with the funding  
15           source's allowability for such purposes;

16  
17           (3) the number of awards to be presented for each category;

18  
19           (4) the basis for award criteria, such as performance data, an application, a  
20           nomination, any combination thereof, or any other criteria;

21  
22           (5) the classification, if any, of workforce system award recipients for comparison  
23           purposes;

24  
25           (6) the method by which each award will be evaluated; and

26  
27           (7) other criteria as determined by the Commission.

28  
29       ~~The following are the two types of incentive awards:~~

30  
31           ~~(1) Nonmonetary awards, which may be awarded annually based on high-~~  
32           ~~performance achievement, and/or continuous improvement in meeting~~  
33           ~~performance measures, or other recognition as determined by the Commission,~~  
34           ~~and may include plaques, certificates of achievement, or other formalized~~  
35           ~~recognition accolades.~~

36  
37           ~~(2) Monetary awards, which include:~~

38  
39           ~~(A) performance awards issued under §802.166 of this subchapter;~~

40  
41           ~~(B) WIA local incentive awards issued under §802.167 of this subchapter;~~

42  
43           ~~(C) job placement incentive awards issued under §802.168 of this~~  
44           ~~subchapter; and~~

45  
46           ~~(D) other awards designated by the Commission.~~

1  
2 **~~§802.164. Data Collection.~~**  
3

4 ~~(a) Boards and AEL grant recipients are responsible for complete and accurate data~~  
5 ~~entry prior to Commission established deadlines.~~  
6

7 ~~(b) The Commission reserves the right not to consider data submitted after the deadline~~  
8 ~~or data that it finds to be inaccurate in its evaluation of performance for awards.~~  
9

10 **§802.165. Board-Workforce Award Recipient Classification.**  
11

12 (a) The Commission may group workforce system partners, including, but not limited  
13 to, Boards and AEL grant recipients, in classifications for comparison purposes to  
14 determine workforce award recipients.~~such as for awarding incentives.~~  
15

16 (b) In classifying potential workforce award recipients, ~~Boards,~~ the Commission may  
17 group potential award recipients ~~Boards~~ based on similarities or differences among  
18 the potential award recipients ~~Boards~~ relating to:

19  
20 (1) allocations of funds;

21  
22 (2) prior performance;~~or~~

23  
24 (3) demographic, economic, or other characteristics of the individual workforce  
25 areas or service--delivery areas;

26  
27 (4) size; or

28  
29 (5) other characteristics as determined by the Commission.  
30

31 **§802.166. Notification.**  
32

33 (a) The Agency shall notify Boards, AEL grant recipients, and other workforce system  
34 partners, as applicable, of the current year's awards classifications, criteria, deadlines,  
35 and methods by which awards information may be submitted to the Agency for  
36 consideration.  
37

38  
39 (b) The notice required under this section shall be provided by the end of the calendar  
40 year preceding the presentation of awards.  
41

42 (c) The Commission may add, modify, or remove an award or award type after the  
43 notification deadline when necessary due to extraordinary circumstances. Where the  
44 Commission takes such action, the Agency shall promptly notify Boards, AEL grant  
45 recipients, and other workforce system partners, as applicable, of the action taken  
46 and any changes to the previously noticed awards.

1  
2 ~~§802.166. Performance Awards.~~  
3

4 ~~(a) The Commission may determine the amount of funds for use to reward performance~~  
5 ~~annually.~~  
6

7 ~~(b) Incentive awards for performance may be given in each classification and the~~  
8 ~~Commission may give more than one award in each classification.~~  
9

10 ~~(c) The Commission may use any combination of existing state or federal performance~~  
11 ~~measures and may develop its own measures to evaluate performance.~~  
12

13 ~~(1) If the Commission includes a measure that does not already have a target, the~~  
14 ~~Commission may:~~  
15

16 ~~(A) set an incentive target for the sole purpose of evaluating eligible Boards~~  
17 ~~for the incentive awards (failure to meet an incentive target does not~~  
18 ~~subject the Board to sanction);~~  
19

20 ~~(B) rate performance based on each Board's "relative improvement" in~~  
21 ~~performance from the prior year; or~~  
22

23 ~~(C) compare exhibited performance among the Boards in a classification if~~  
24 ~~the measure allows comparability across Boards of different sizes. (For~~  
25 ~~example, the "percent of job orders timely posted" allows performance to~~  
26 ~~be measured across Boards of different sizes, but the "number of job~~  
27 ~~orders timely posted" does not.)~~  
28

29 ~~(2) The Commission may use a measure and a subset of a measure in the same~~  
30 ~~year. For example, the Commission could include one measure that considers~~  
31 ~~employers with job postings in the job matching system and another measure~~  
32 ~~that considers employers with job postings in targeted occupations.~~  
33

34 ~~(d) If the Commission is considering issuing awards under this section, the Commission~~  
35 ~~shall notify Boards of the method by which performance shall be evaluated for the~~  
36 ~~purpose of giving awards under this rule for that year.~~  
37

38 ~~(1) The notice required under this subsection shall be provided to the Boards~~  
39 ~~concurrent with their yearly contracts.~~  
40

41 ~~(2) The notice may include:~~  
42

43 ~~(A) a listing of the Boards assigned to each classification;~~  
44

45 ~~(B) a listing of awards;~~  
46

1 ~~(C) a listing of the performance measures to be included in each evaluation~~  
2 ~~category including:~~

3  
4 ~~(i) the period of evaluation for each performance measure; and~~

5  
6 ~~(ii) the method of evaluation for each performance measure;~~

7  
8 ~~(D) the weightings to be used to aggregate the performance measures to~~  
9 ~~allow each Board's overall performance to be ranked and also encourage~~  
10 ~~an emphasis on employer focused measures;~~

11  
12 ~~(E) the anticipated amount of funds available to be awarded; and~~

13  
14 ~~(F) other criteria to be used to identify superior performance.~~

15  
16 ~~(e) The Commission shall rank a Board's performance for each performance measure as~~  
17 ~~follows.~~

18  
19 ~~(1) For measures that have performance targets, the Commission shall determine~~  
20 ~~each Board's "success rate" by dividing the Board's actual performance by its~~  
21 ~~target for the measure.~~

22  
23 ~~(2) For measures that have no performance targets, the Commission shall~~  
24 ~~determine each Board's actual performance (or change in performance if that~~  
25 ~~was the method identified as the method for evaluation) and call this the~~  
26 ~~"performance rate."~~

27  
28 ~~(3) For each measure, the Commission shall replace the "success rate" or the~~  
29 ~~"performance rate" with a ranking. The Board with the "best" ranking in its~~  
30 ~~classification shall be ranked "1," the second best ranked "2," etc. If two~~  
31 ~~Boards in a classification are tied for a position, such as second place, both~~  
32 ~~shall be ranked "2" and the Board with the next "best" ranking shall be ranked~~  
33 ~~"4."~~

34  
35 ~~(f) The Commission shall assign each Board a final rank as follows.~~

36  
37 ~~(1) The Commission shall use the weightings identified in subsection (d)(2)(D) of~~  
38 ~~this section to determine the weighted rank of the performance rankings~~  
39 ~~assigned under subsection (e) of this section.~~

40  
41 ~~(2) Each Board's weighted rank shall be converted to an overall ranking within the~~  
42 ~~Board's classification. That is, the Board with the lowest weighted rank in a~~  
43 ~~classification is ranked "1," the second lowest ranked "2," etc. If two Boards~~  
44 ~~are tied for a position such as second place, both shall be ranked "2" and the~~  
45 ~~next "best" Board will be ranked "4."~~

1 ~~(g) The award for each classification shall be given to the Board in the classification with~~  
2 ~~the best overall ranking. If the Commission is assigning more than one award in a~~  
3 ~~classification, the Boards with the highest rankings shall receive the award.~~

4  
5 ~~(h) Boards that receive a performance award shall use the incentive award to carry out~~  
6 ~~workforce activities as allowed by state and federal laws.~~

7  
8 ~~(i) The Commission may modify the assignment of awards based on factors that the~~  
9 ~~Commission identifies as extraordinary circumstances.~~

10  
11 **§802.167. Extraordinary Circumstances.**

12  
13 Under extraordinary circumstances, as defined in this subchapter, the Commission may  
14 modify eligibility for and assignment of awards as necessary based on factors that the  
15 Commission identifies.

16  
17 ~~**§802.167. Workforce Investment Act Local Incentive Awards.**~~

18  
19 ~~(a) The Commission shall determine annually the total amount of funds to be awarded from~~  
20 ~~funds available through the WIA §128(a) and §133(a)(1) for local incentive awards.~~

21  
22 ~~(b) WIA WIOA local incentive awards may be awarded for one or more of the following:~~

23  
24 ~~(1) regional cooperation among workforce areas;~~

25  
26 ~~(2) local coordination of activities carried out under WIA; and~~

27  
28 ~~(3) exemplary performance on performance measures.~~

29  
30 ~~(c) The application for WIA local incentive awards shall be as follows.~~

31  
32 ~~(1) Only those Boards submitting a written application shall be eligible for WIA WIOA local~~  
33 ~~incentive awards (other than awards for exemplary performance, which do not require a written~~  
34 ~~application).~~

35  
36 ~~(2) The Commission shall issue instructions annually identifying the amount of funds~~  
37 ~~available for awards, the maximum number of awards, and instructions for submitting~~  
38 ~~applications for WIA local incentive awards.~~

39  
40 ~~(d) Awards may be made based on consideration of various factors consistent with WIA WIOA~~  
41 ~~goals such as:~~

42  
43 ~~(1) identified changes in economic conditions, population characteristics, and the service~~  
44 ~~delivery system in the workforce area;~~

45  
46 ~~(2) reported performance for each contract performance measure relative to other Boards;~~

1  
2 ~~(3) — demonstrated performance in the elements considered most critical in accomplishing~~  
3 ~~overall system goals, which includes performance related to each of the items listed in~~  
4 ~~§802.168(b) of this subchapter;~~  
5

6 ~~(4) — improved performance relative to the preceding year;~~  
7

8 ~~(5) — demonstrated compliance with all expenditure requirements as required by §800.63(h) of~~  
9 ~~this title; and~~  
10

11 ~~(6) — finalized monitoring reports and resolution activities.~~  
12

13 ~~(e) — Boards that receive a WIA local incentive award shall use the award to carry out workforce~~  
14 ~~activities as allowed by state and federal laws.~~  
15

16 ~~(f) — The Commission may modify the assignment of awards based on factors that the~~  
17 ~~Commission identifies as extraordinary circumstances.~~  
18

19 ~~**§802.168. Job Placement Incentive Awards.**~~  
20

21 ~~(a) — The Commission may set aside an amount of funds for job placement incentive awards~~  
22 ~~during the annual budget process or at other times during the year as deemed appropriate by the~~  
23 ~~Commission based on the funds available to meet the objectives of the Commission. For the~~  
24 ~~purposes of this section, the term "Choices eligible" shall have the same meaning as set forth in~~  
25 ~~§811.2 of this title.~~  
26

27 ~~(b) — Administration through Boards shall be as follows.~~  
28

29 ~~(1) — The Commission shall administer the job placement incentive awards through the Boards~~  
30 ~~by distributing funds to Boards that demonstrate the highest percentage of increase in~~  
31 ~~employment of Choices eligibles in higher wage jobs. Awards may be given in each~~  
32 ~~classification and the Commission may give more than one award in each classification.~~  
33

34 ~~(2) — Boards receiving a distribution of funds shall establish policies and procedures to create~~  
35 ~~incentives for their workforce service providers. The Boards shall determine how the local~~  
36 ~~awards of funds are expended to provide incentives to workforce service providers within the~~  
37 ~~workforce area for effective employment of Choices eligibles in higher wage jobs. The Boards~~  
38 ~~shall ensure that workforce service providers receiving the job placement incentive awards use~~  
39 ~~the funds for expenses relating to education, training, and support services as necessary to~~  
40 ~~prepare, place, and maintain Choices eligibles in employment leading to self-sufficiency.~~  
41

42 ~~(c) — The criteria for distributing award funds to Boards shall be the same as the measure of higher~~  
43 ~~wage jobs. The measure of higher wage jobs shall use the most recent available in~~  
44 ~~unemployment insurance (UI) wages reported quarterly by employers for Choices eligibles in~~  
45 ~~employment and be determined by:~~  
46

1 ~~(1) — each workforce area's baseline average quarterly reported UI wages for all Choices~~  
2 ~~eligibles in employment during a 12-month period designated by the Commission;~~

3  
4 ~~(2) — each workforce area's average quarterly UI wages for all Choices eligibles in employment~~  
5 ~~during the 12-month period subsequent to the baseline measurement period; and~~

6  
7 ~~(3) — comparing the average quarterly UI wages for all Choices eligibles in employment for the~~  
8 ~~two measurement periods to determine Boards that have achieved the highest percent increase in~~  
9 ~~overall wages to Choices eligibles.~~

10  
11 ~~(d) — The Commission may modify the assignment of awards based on factors that the~~  
12 ~~Commission identifies as extraordinary circumstances.~~

13  
14 **~~§802.169. AEL Incentive Awards.~~**

15  
16 ~~(a) — The Commission may issue monetary and nonmonetary awards to AEL grant recipients,~~  
17 ~~which may be awarded annually based on high performance achievement or continuous~~  
18 ~~improvement in meeting performance measures:~~

19  
20 ~~(1) — The Commission may determine the amount of funds for use to reward performance~~  
21 ~~annually.~~

22  
23 ~~(2) — The Commission may use any combination of existing state or federal performance~~  
24 ~~measures and may develop its own measures to evaluate performance.~~

25  
26 ~~(3) — If the Commission includes a measure that does not have a target, the Commission may:~~

27  
28 ~~(A) — set an incentive target for the sole purpose of evaluating eligible AEL grant recipients for~~  
29 ~~the incentive awards (failure to meet an incentive target does not subject AEL grant recipients to~~  
30 ~~sanction); or~~

31  
32 ~~(B) — rate performance based on each AEL grant recipient's "relative improvement" in~~  
33 ~~performance from the prior year.~~

34  
35 ~~(b) — The Commission may use a measure and a subset of a measure in the same year.~~

36  
37 ~~(c) — If the Commission is considering issuing awards under this section, the Commission shall~~  
38 ~~notify AEL grant recipients of the method by which performance shall be evaluated for the~~  
39 ~~purpose of giving awards under this rule for that year.~~

40  
41 ~~(1) — The notice required under this subsection shall be provided to the AEL grant recipients~~  
42 ~~concurrent with their yearly contracts.~~

43  
44 ~~(2) — The notice may include:~~

45  
46 ~~(A) — a listing of awards;~~

- 1  
2 ~~(B) a listing of the performance measures to be included in each evaluation category including:~~  
3  
4 ~~(i) the period of evaluation for each performance measure; and~~  
5  
6 ~~(ii) the method of evaluation for each performance measure;~~  
7  
8 ~~(C) the weightings to be used to aggregate the performance measures to allow each AEL grant~~  
9 ~~recipient's overall performance to be ranked;~~  
10  
11 ~~(D) the anticipated amount of funds available to be awarded; and~~  
12  
13 ~~(E) other criteria to be used to identify superior performance.~~  
14  
15 ~~(d) AEL grant recipients that receive a performance award shall use the incentive award to~~  
16 ~~carry out AEL activities as allowed by state and federal laws.~~  
17  
18 ~~(e) The Commission may modify the assignment of awards based on factors that the~~  
19 ~~Commission identifies as extraordinary circumstances.~~