

CHAPTER 800. GENERAL ADMINISTRATION

PROPOSED 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 NOVEMBER 12, 2013, THE TEXAS WORKFORCE COMMISSION PROPOSED THE BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated Publication Date of the Proposal in the *Texas Register*: **November 29, 2013**
Estimated End of Comment Period: **December 30, 2013**

The Texas Workforce Commission (Commission) proposes the following new sections to Chapter 800, relating to General Administration:

Subchapter B. Allocations, §800.68 and §§800.78 - 800.80

The Commission proposes amendments to the following sections of Chapter 800, relating to General Administration:

Subchapter A. General Provisions, §800.2

Subchapter B. Allocations, §800.51, §800.52, §800.71, and §800.72

- PART I. PURPOSE, BACKGROUND, AND AUTHORITY
- PART II. EXPLANATION OF INDIVIDUAL PROVISIONS
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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.

Further, to fully incorporate AEL programs into the Agency's administrative oversight framework, amendments are necessary in Chapter 802, regarding Integrity of the Texas Workforce System. To ensure a seamless transition of rules, the Chapter 802 amendments and new Chapter 805 are proposed 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 proposed Chapter 800 amendments is to:

- set forth rules for the AEL program regarding:
 - allocations;
 - midyear deobligation of funds;
 - voluntary deobligation of funds; and
- make necessary technical changes.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

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

SUBCHAPTER A. GENERAL PROVISIONS

The Commission proposes the following amendments to Subchapter A:

§800.2. Definitions

New §800.2(1) defines "Adult Education and Literacy (AEL)" as services designed to provide adults with sufficient basic education that enables them to effectively:

- (A) acquire the basic educational skills necessary for literate functioning;
- (B) participate in job training and retraining programs;
- (C) obtain and retain employment; and
- (D) continue their education to at least the level of completion of secondary school and preparation for postsecondary education.

New §800.2(15)(J) defines the AEL program year as July 1 - June 30.

Certain paragraphs in this section have been renumbered to accommodate additions.

SUBCHAPTER B. ALLOCATIONS

The Commission proposes the following amendments to Subchapter B:

§800.51. Scope and Purpose

Section 800.51(b) adds "AEL grant recipient with an approved contract with the Agency" as an entity subject to the provisions regarding scope and purpose of this subchapter.

Section 800.51(c) adds "an AEL grant recipient" as an entity with which the Commission will negotiate allocated amounts for contract periods of less than a complete year, based on the remaining months of the program year.

§800.52. Definitions

Section 800.52(4) adds "an AEL grant recipient" to the definition of "contract period."

Section 800.52(5) adds "an AEL grant recipient" to the definition of "deobligation."

Section 800.52(8) adds "an AEL grant recipient" to the definition of "monthly expenditure report."

New §800.68. Adult Education and Literacy

New §800.68 sets forth the allocation methodology for AEL funds. SB 307 provides that funds may be allocated pursuant to a need-based formula that ensures compliance with federal requirements and also achieves integrated education and training. In addition, stakeholders expressed support for the development of strategies to advance the linkage between adult education and workforce training, as well as the use of innovation in the delivery, support, and expansion of AEL services in Texas.

Historically, TEA has only reserved federal funds to support state administration and leadership activities. Federal state leadership funds may be used to support or facilitate linkages between adult education and training, including professional development and technical assistance, program coordination and integration, and coordination with existing support services, such as transportation and child care. However, these funds specifically cannot be used for the delivery of technical skills training.

Each year, after funds had been set aside for state administration and leadership purposes, TEA allocated state and federal AEL funds to grantees largely based upon prior funding levels, proportionate share of need, and performance. Each grantee's total allocation comprised a base allocation and a performance allocation. Historically, base allocations remained constant from year to year while performance allocations varied based on individual program performance. Stakeholders expressed concerns that the allocation formulas did not truly determine proportionate share of need, were difficult to understand, and included overly complex performance methodology.

It is the Commission's intent to provide a clear, easily understood allocation methodology in rule to alleviate these concerns and to clarify any issues surrounding transparency of the methodology or the logic of the distribution of available funds.

Based on legislative authorization and stakeholder input, there is a clear need to fund the development and piloting of innovative methods for delivering services, including the

identification of effective uses of technology. Coupled with ensuring that funding is available to meet SB 307's expectation that integrated adult education and skills training models be developed, the rules provide that in addition to the federal funds allowed for state leadership and administration--12.5 percent for state leadership activities and 5 percent for administration--a maximum amount of state adult education funds and federal Temporary Assistance for Needy Families (TANF) funds also may be used for those purposes. Consistent with other workforce funding sources, an amount not to exceed 20 percent of state and federal TANF funds can be reserved for state administration and leadership activities.

The Commission recognizes that local workforce development areas (workforce areas) will require a meaningful investment in capacity-building efforts to support the seamless alignment of adult education and literacy and technical training for industry certifications and degrees. Capacity-building efforts such as curriculum development, technical assistance, professional development, and demonstration projects using innovative concurrent training models will support local system change and alignment. The Commission's goals for investments in technology and other capacity-building efforts from a statewide perspective are increases in direct service delivery over time and improvements in the overall outcomes for students. Thus, the Commission believes that reserving an amount not to exceed 20 percent of state and federal TANF funds may be needed for state leadership purposes to adequately support these efforts.

For federal Adult Education and Family Literacy Act (AEFLA) state grant funds, administrative costs are limited to 5 percent of the amounts provided to AEL service providers, unless there is effective justification for the application of the Special Rule in AEFLA §233(b). For state AEL matching funds and federal TANF funds included in the AEL program, administrative costs will be limited to 15 percent of amounts provided to AEL service providers.

New §800.68 sets forth the allocation methodologies for both federal and state AEL funds, federal English Literacy/Civics (EL/Civics) funds, federal TANF funds, and state general revenue appropriated as TANF maintenance-of-effort, after setting aside funds for state administration and state leadership. The methodologies mirror the federal methodologies used to allocate funds to the states, as applicable. Texas Labor Code §302.062 provides that if the Commission block grants funds for workforce training, employment services, and support services--and if the funds are allocated to the state through the application of established formulas--then the Commission must allocate amounts available across the state to workforce areas (which are geographic constructs and are not synonymous with Local Workforce Development Boards (Boards)) using the same formula used to provide the funds to the state. This is the practice followed for most of the Commission's block-granted programs. The Commission is proposing the block granting of AEL funds to the workforce areas based precisely on the methodology and data the U.S. Department of Education's Office of Vocational and Adult Education (OVAE) uses to allocate the funds to Texas. A proportion of these allocations will become available through the achievement of performance benchmarks, which will reward the performance of AEL service providers.

OVAE provides federal AEFLA state grant funds to states using a 90 percent "hold-harmless" procedure (i.e., the proportion of the state grant to the total of all state grants is at least 90 percent

of the prior year's proportion), and the Commission proposes allocating AEL funds using a hold-harmless procedure. (Additionally, Texas Labor Code §302.062 provides that the 90 percent hold-harmless provision applies to block grant allocations.)

New §800.68(a) states that AEL funds available to the Commission to provide services under AEFLA, Workforce Investment Act Title II, together with associated state general revenue matching funds and federal TANF funds--along with any state general revenue funds appropriated as TANF maintenance-of-effort--will be used by the Commission as set forth in subsections (b) - (f) of this section.

New §800.68(b) provides that at least 82.5 percent of the federal funds constituting the total state award of AEFLA state grants--including amounts allotted to the eligible agency having a state plan, as provided by AEFLA §211(c) and amounts provided to the eligible agency under §243 for EL/Civics--will be allocated by the Commission to the workforce areas. From the amount allotted to the eligible agency having a state plan, as provided by AEFLA §211(c), the Commission will allocate amounts to the workforce areas according to the established federal formula, as follows:

--(1) 100 percent will be based on:

--(A) the relative proportion of individuals residing within each workforce area who are at least 18 years of age, do not have a secondary school diploma or its recognized equivalent, and are not enrolled in secondary school, during the most recent period for which statistics are available;

--(B) an equal base amount; and

--(C) the application of a hold-harmless procedure (for any program year after Fiscal Year (FY) 2015).

--(2) No more than 5 percent of the funds expended as part of this workforce area allocation must be used for administrative costs, as defined by AEFLA, provided, however, that the Special Rule outlined in AEFLA §233(b) must apply with effective justification, as appropriate.

--(3) No more than 10 percent of this allocation must be available for expenditure within each workforce area on the basis of the achievement of performance benchmarks, as set forth in subsection (f) of this section.

New §800.68(c) stipulates that at least 80 percent of the state general revenue matching funds associated with the allotment of federal funds to the eligible agency having a state plan, as provided by AEFLA §211(c) will be allocated by the Commission to the workforce areas according to the established federal formula, as follows:

--(1) 100 percent will be based on:

--(A) the relative proportion of individuals residing within each workforce area who are at least 18 years of age, do not have a secondary school diploma or its recognized equivalent, and are not enrolled in secondary school, during the most recent period for which statistics are available;

--(B) an equal base amount; and

--(C) the application of a hold-harmless procedure (for any program year after FY 2015).

--(2) No more than 15 percent of the funds expended as part of this workforce area allocation must be used for administrative costs, as defined by Commission policy.

- (3) No more than 10 percent of this allocation must be available for expenditure within each workforce area on the basis of the achievement of performance benchmarks, as set forth below.

New §800.68(d) provides that at least 82.5 percent of the federal funds provided to the eligible agency from amounts under AEFLA §243 for EL/Civics will be allocated by the Commission among the workforce areas according to the established federal formula, as follows:

- (1) The relative proportion based on:
 - (A) 65 percent of the average number of legal permanent residents during the most recent 10-year period, available from U.S. Citizenship and Immigration Services data; and
 - (B) 35 percent of the average number of legal permanent residents during the most recent three-year period, available from U.S. Citizenship and Immigration Services data;
- (2) a base amount of 1 percent for each workforce area; and
- (3) the application of a hold-harmless procedure (for any program year after FY 2015).
- (4) No more than 5 percent of the funds expended as part of this workforce area allocation must be used for administrative costs, as defined by AEFLA; and
- (5) No more than 10 percent of this allocation must be available for expenditure within each workforce area on the basis of the achievement of performance benchmarks, as set forth below.

New §800.68(e) provides that at least 80 percent of federal TANF funds associated with the AEL program--together with any state general revenue funds appropriated as TANF maintenance-of-effort--will be allocated by the Commission to the workforce areas according to a need-based formula, as follows:

- (1) 100 percent will be based on:
 - (A) the relative proportion of the unduplicated number of TANF adult recipients with educational attainment of less than a secondary diploma during the most recently completed calendar year;
 - (B) an equal base amount; and
 - (C) the application of a hold-harmless procedure (for any program year after FY 2015).
- (2) No more than 15 percent of the funds expended as part of this workforce area allocation must be used for administrative costs, as defined by federal regulations and Commission policy.
- (3) No more than 10 percent of this allocation must be available for expenditure within each workforce area on the basis of the achievement of performance benchmarks, as set forth below.

New §800.68(f) states that AEL performance accountability benchmarks must be established to coincide with performance measures and reports, or other periods, as determined by the Commission. Levels of performance must, at a minimum, be expressed in an objective, quantifiable, and measureable form, and show continuous improvement.

§800.71. General Deobligation and Reallocation Provisions

Section 800.71(b) adds "AEL grant recipient" as an entity subject to §§800.71 - 800.77 of this subchapter.

Section 800.71(b)(1) adds "Adult Education and Literacy" as a category of funding subject to §§800.71 - 800.77 of this subchapter.

Certain paragraphs in this section have been renumbered to accommodate additions.

§800.72. Reporting Requirements

Section 800.72 adds "an AEL grant recipient" as an entity subject to the provisions regarding reporting requirements.

New §800.78. Midyear Deobligation of AEL Funds

New §800.78 sets forth the following provisions for midyear deobligation of AEL funds, which are similar to those applicable to other workforce funding streams, except that priority must be given to AEL grant recipients providing AEL services in the same workforce area, upon receipt and approval by the Commission of an acceptable plan:

- (a) The Commission may deobligate funds from an AEL grant recipient during the program year if an AEL grant recipient is not meeting the expenditure thresholds set forth in subsection (b) of this section.
 - (1) AEL grant recipients that fail to meet the expenditure thresholds set forth in subsection (b) of this section at the end of months five, six, seven, or eight of the program year (i.e., midyear) will be reviewed to determine the causes for the underexpenditure of funds, except as set forth in subsection (e) of this section.
 - (2) The Commission must not deobligate more than the difference between an AEL grant recipient's actual expenditures and the amount corresponding to the relative proportion of the program year.
 - (3) The Commission must not deobligate funds from an AEL grant recipient that failed to meet the expenditure thresholds set forth in subsection (b) of this section, if within 60 days prior to the potential deobligation period the Commission executes a contract amendment for a supplemental allocation or reallocation of funds in the same program funding category.
- (b) The Commission may deobligate funds midyear, as set forth in subsection (a) of this section, if an AEL grant recipient fails to achieve the expenditure of an amount corresponding to 90 percent or more of the relative proportion of the program year.
- (c) An AEL grant recipient subject to deobligation for failure to meet the requirements set forth in this section must, upon request by the Commission, submit a written justification. For an AEL consortium, a copy must be provided to all consortium members. The written justification must provide sufficient detail regarding the actions an AEL grant recipient will take to address its deficiencies, including:
 - (1) expansion of services proportionate to the available resources;
 - (2) projected service levels and related performance;
 - (3) reporting outstanding obligations; and
 - (4) any other factors an AEL grant recipient would like the Commission to consider.
- (d) Any amounts deobligated from an AEL grant recipient must be made available as a first priority to any other AEL grant recipient(s) providing AEL services within the same workforce area that meet the requirements of new §800.80(a), upon receipt and approval by the Commission of an acceptable plan.

--(e) To the extent this section may be found not to comply with federal requirements, or should any related federal waivers expire, the Commission will be subject to federal requirements in effect, as applicable.

New §800.79. Voluntary Deobligation of AEL Funds

New §800.79 states that to request a voluntary deobligation of funds allocated to the workforce area, an AEL grant recipient's chief executive officer must submit a written request to the Commission. For an AEL consortium, a copy must be provided to all consortium members. Any amounts voluntarily deobligated from an AEL grant recipient must be available as a first priority to any other AEL grant recipient(s) providing AEL services within the same workforce area, upon receipt and approval by the Commission of an acceptable plan.

New §800.80. Reallocation of AEL Funds

New §800.80 sets forth the reallocation provisions for AEL funds, which are similar to those applicable to other workforce funding streams, with the exception that any AEL reallocation must apply to AEL grant recipients, as follows:

--(a) For an AEL grant recipient to be eligible to receive deobligated AEL funds, the Commission may consider whether the AEL grant recipient:

- (1) has met targeted expenditure levels as required by §800.78(a) of this subchapter, as applicable, for that period;
- (2) has not expended or obligated more than 100 percent of the grant recipient's allocation for the category of funding;
- (3) has demonstrated that expenditures conform to cost category limits for funding;
- (4) has demonstrated the need for and ability to use additional funds;
- (5) is current on expenditure reporting;
- (6) is current with all single audit requirements; and
- (7) is not under sanction.

--(b) Any amounts deobligated or voluntarily deobligated from an AEL grant recipient must be made available as a first priority to any other AEL grant recipients providing AEL services within the same workforce area that meet the requirements of new §800.80(a), upon receipt and approval by the Commission of an acceptable plan. Following the determination that any such plan has not been determined to be acceptable, the Commission may consider an AEL grant recipient satisfying the requirements of subsection (a) of this section, upon receipt and approval by the Commission of an acceptable plan.

PART III. IMPACT STATEMENTS

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

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

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

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

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

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

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

Economic Impact Statement and Regulatory Flexibility Analysis

The Agency has determined that the proposed rules will not have an adverse economic impact on small businesses as these proposed rules place no requirements on small businesses.

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

Reagan Miller, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to provide for the effective administration of AEL services that are aligned with other services provided through the workforce system.

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

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of Texas' 28 Boards and AEL stakeholders. The Commission provided the concept paper regarding these rule amendments to the Boards and AEL stakeholders for consideration and review on September 11, 2013. The Commission also conducted a webinar on September 19, 2013, to discuss the concept paper. During the rulemaking process, the Commission considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide 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 proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

CHAPTER 800. GENERAL ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

§800.2. Definitions.

The following words and terms, when used in this part, relating to the Texas Workforce Commission, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Adult Education and Literacy (AEL)--Services designed to provide adults with sufficient basic education that enables them to effectively:

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

(B) participate in job training and retraining programs;

(C) obtain and retain employment; and

(D) continue their education to at least the level of completion of secondary school and preparation for postsecondary education.

(2)(4) Agency--The unit of state government established under Texas Labor Code Chapter 301 that is presided over by the Commission and administered by the executive director ~~Executive Director~~ to operate the integrated workforce development system and administer the unemployment compensation insurance program in this state as established under the Texas Unemployment Compensation Act, Texas Labor Code Annotated, Title 4, Subtitle A, as amended. The definition of "Agency" shall apply to all uses of the term in rules contained in this part, or unless otherwise defined, relating to the Texas Workforce Commission that are adopted after February 1, 2001.

(3)(2) Allocation--The amount approved by the Commission for expenditures to a local workforce development area during a specified program year, according to specific state and federal requirements.

(4)(3) Board--A Local Workforce Development Board created pursuant to Texas Government Code §2308.253 and certified by the governor ~~Governor~~ pursuant to Texas Government Code §2308.261. This includes such a Board when functioning as the Local Workforce Investment Board as described in the Workforce Investment Act §117 (29 U.S.C.A. §2832), including those functions required of a Youth Council, as provided for under ~~the~~ Workforce Investment Act §117(i). The definition of Board ~~"Board"~~ shall apply to all uses of the term in the rules contained in this part, or unless otherwise defined, relating to the Texas Workforce Commission that are adopted after February 1,

2001. Boards are subrecipients as defined in OMB Circular A-133.

(5)(4) Child Care--Child care services funded through the Commission, which may include services funded under the Child Care and Development Fund, WIA, and other funds available to the Commission or a Board to provide quality child care to assist families seeking to become independent from, or who are at risk of becoming dependent on, public assistance while parents are either working or participating in educational or training activities in accordance with state and federal statutes and regulations.

(6)(5) Choices--The employment and training activities created under §31.0126 of the Texas Human Resources Code and funded under TANF (42 U.S.C.A. 601 *et seq.*) to assist persons who are receiving temporary cash assistance, transitioning off, or at risk of becoming dependent on temporary cash assistance or other public assistance in obtaining and retaining employment.

(7)(6) Commission--The body of governance of the Texas Workforce Commission composed of three members appointed by the governor ~~Governor~~ as established under Texas Labor Code §301.002 that includes one representative of labor, one representative of employers, and one representative of the public. The definition of Commission "~~Commission~~" shall apply to all uses of the term in rules contained in this part, or unless otherwise defined, relating to the Texas Workforce Commission that are adopted after February 1, 2001.

(8)(7) Formal Measures--Workforce development services performance measures adopted by the governor ~~Governor~~ and developed and recommended through the Texas Workforce Investment Council (TWIC).

(9)(8) Employment Service--A program to match qualified job seekers with employers through a statewide network of one-stop career centers. (The Wagner-Peyser Act of 1933 (Title 29 U.S.C., Chapter 4B) as amended by the Workforce Investment Act of 1998 (P.L. 105-220))

(10)(9) Executive Director--The individual appointed by the Commission to administer the daily operations of the Agency, which may include a person delegated by the Executive Director to perform a specific function on behalf of the Executive Director.

(11)(10) Local Workforce Development Area (workforce area)--Workforce areas designated by the governor ~~Governor~~ pursuant to Texas Government Code §2308.252 and functioning as a Local Workforce Investment Area, as provided for under ~~the~~ Workforce Investment Act §116 and §189(i)(2) (29 U.S.C.A., §2831 and §2939).

(12)(11) One-Stop Service Delivery Network--A one-stop-based network under which entities responsible for administering separate workforce investment,

educational, and other human resources programs and funding streams collaborate to create a seamless network of service delivery that shall enhance the availability of services through the use of all available access and coordination methods, including telephonic and electronic methods--also known as Texas Workforce Solutions. ~~Also referred to as the Texas Workforce Network.~~

(13)~~(12)~~ Performance Measure--An expected performance outcome or result.

(14)~~(13)~~ Performance Target--A contracted numerical value setting the acceptable and expected performance outcome or result to be achieved for a performance measure, including Core Outcome Formal Measures. Achievement between 95 and 105 percent of the established target is considered meeting the target.

(15)~~(14)~~ Program Year--The twelve-month period applicable to the following as specified:

- (A) Child Care: October 1 - September 30;
- (B) Choices: October 1 - September 30;
- (C) Employment Service: October 1 - September 30;
- (D) Supplemental Nutrition Assistance Program Employment and Training: October 1 - September 30;
- (E) Project RIO: October 1 - September 30;
- (F) Trade Act services: October 1 - September 30;
- (G) Workforce Investment Act (WIA) Adult, Dislocated Worker, and Youth formula funds: July 1 - June 30;
- (H) WIA Alternative Funding for Statewide Activities: October 1 - September 30;~~and~~
- (I) WIA Alternative Funding for One-Stop Enhancements: October 1 - September 30;~~;~~ and
- (J) Adult Education and Literacy: July 1 - June 30.

(16)~~(15)~~ Project Reintegration of Offenders (RIO)--A program that prepares and transitions ex-offenders released from Texas Department of Criminal Justice or Texas Juvenile Justice Department ~~Texas Youth Commission~~ incarceration into gainful employment as soon as possible after release, consistent with

provisions of the Texas Labor Code, Chapter 306; Texas Government Code §2308.312; and the Memorandum of Understanding with the Texas Department of Criminal Justice and the [Texas Juvenile Justice Department](#) ~~Texas Youth Commission~~.

- (17)(16) Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T)--A program to assist SNAP recipients to become self-supporting through participation in activities that include employment, job readiness, education, and training, activities authorized and engaged in as specified by federal statutes and regulations (7 U.S.C.A. §2011), and Chapter 813 of this title relating to Supplemental Nutrition Assistance Program Employment and Training.
- (18)(17) TANF--Temporary Assistance for Needy Families, which may include temporary cash assistance and other temporary assistance for eligible individuals, as defined in the Personal Responsibility and Work [Opportunity](#) ~~Opportunities~~-Reconciliation Act of 1996, as amended (7 U.S.C.A. §201.1 *et seq.*) and the ~~Temporary Assistance for Needy Families~~[TANF](#) statutes and regulations (42 U.S.C.A. §601 *et seq.*, 45 Code of Federal Regulations (C.F.R.) Parts 260 - 265). TANF may also include the TANF State Program (TANF SP), relating to two-parent families, which is codified in Texas Human Resources Code, Chapter 34.
- (19)(18) Trade Act Services--Programs authorized by the Trade Act of 1974, as amended (and 20 C.F.R. Part 617) providing services to dislocated workers eligible for Trade benefits through Workforce Solutions Offices.
- (20)(19) TWIC--Texas Workforce Investment Council, appointed by the [governor](#) ~~Governor~~ pursuant to Texas Government Code §2308.052 and functioning as the State Workforce Investment Board (~~SWIB~~), as provided for under ~~the~~ Workforce Investment Act §111(e) (29 U.S.C.A. §2821(e)). In addition, pursuant to the Workforce Investment Act §194(a)(5) (29 U.S.C.A. §2944(a)(5)), TWIC maintains the duties, responsibilities, powers, and limitations as provided in Texas Government Code §§2308.101 - 2308.105.
- (21)(20) WIA--Workforce Investment Act (P.L. 105-220, 29 U.S.C.A. §2801 *et seq.*). References to WIA include references to WIA formula-allocated funds unless specifically stated otherwise.
- (22)(21) WIA Formula-Allocated Funds--Funds allocated by formula to workforce areas for each of the following separate categories of services: WIA Adult, Dislocated Worker and Youth (excluding the Secretary's and [governor's](#) ~~Governor's~~ reserve funds and rapid response funds).
- (23)(22) Workforce Solutions Offices Partner--An entity that carries out a workforce investment, educational, or other human resources program or

activity, and that participates in the operation of the One-Stop Service Delivery Network in a workforce area consistent with the terms of a memorandum of understanding entered into between the entity and the Board.

SUBCHAPTER B. ALLOCATIONS

§800.51. Scope and Purpose.

- (a) The purpose of this rule is to interpret Texas Labor Code, §302.062-, relating to the allocation of available funds for workforce training and services from the Texas Workforce Commission to workforce areas, as well as Texas Labor Code, §301.001 and §302.002, which establish the Texas Workforce Commission to operate an integrated workforce development system in this state, in particular through the consolidation of job training, employment, and employment-related programs, and direct the ~~executive director~~ ~~Executive Director~~ to consolidate the administrative and programmatic functions under the authority of the Commission, to achieve efficient and effective delivery of services. It is the intent of the Commission to allocate funds to workforce areas for the purpose of meeting or exceeding statewide performance measures as set forth in the state General Appropriations Act and consistent with the authority reflected in Texas Labor Code ~~§Section~~ 302.004, satisfying federal program requirements, and operating an integrated workforce development system. This subchapter sets forth the funding to be allocated to workforce areas and the methods and procedures to be followed, in order to accomplish the consolidation and integration of workforce development programs. The Commission is committed, whenever possible, to allocating an amount of funds available for workforce training and services greater than the minimum level set by law.
- (b) Funds allocated or reallocated under this subchapter will only be made available under the terms of a properly executed contract between the Commission and a certified ~~Board~~ ~~workforce board~~ with an approved plan or an AEL grant recipient with an approved contract with the Commission.
- (c) The allocation formulas described in this subchapter will only be applicable for allocations and executed contracts for a complete program year. For contract periods of less than a complete program year, the allocated amounts will be negotiated between the Commission and the Board or an AEL grant recipient, based upon the remaining months of the program year.
- (d) Subsections (a) - (c) of this section shall apply to all sections contained in this subchapter unless a section specifically states otherwise.
- (e) Funds available to the Commission that are not otherwise allocated or reallocated under this subchapter, may be used by the Commission for purposes authorized by state and federal laws and regulations.

(f) Notwithstanding any other provision of the rules contained in this part, the level of funding allocated to a workforce area may be determined, modified, or reallocated by the Commission for one or more of the following reasons:

- (1) to ensure full utilization of the funding;
- (2) to ensure compliance with state ~~State~~ and federal requirements applicable to the state ~~State~~;
- (3) to meet the state's ~~State's~~ federal participation rates;
- (4) to respond to caseload changes; or
- (5) to respond to unforeseen demographic or economic changes.

§800.52. Definitions.

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

- (1) **Accrued Expenditures--Charges** incurred during a given period for goods and tangible property received and services performed that cause decreases in net financial resources.
- (2) **All-Family Participation Rate--**The percentage of all families receiving TANF benefits that a state must engage in an approved work activity for a specified number of hours per week as provided by the Personal Responsibility and Work Opportunity ~~Opportunities~~ Reconciliation Act of 1996, §407, as amended.
- (3) **Contract Closeout Settlement Package--**Financial, performance, and other reports required as a condition of the contract, which must be submitted when one of the following conditions is met:
 - (A) the contract has expired;
 - (B) all available funds for the contract period have been paid out;
 - (C) all accrued expenditures chargeable to the specific contract have been incurred; or
 - (D) the period of available funds has expired or been terminated.
- (4) **Contract Period--**The length of time in which a contract for allocated funds between the Commission and a Board or an AEL grant recipient is in effect

and during which funds may be expended for a specified purpose, unless prohibited by a federal grantor agency. A contract period longer than a program year shall be specified under the terms of a properly executed contract.

- (5) Deobligation--An action adopted by the Commission to decrease an amount for a specific program and contract period in a contract with a Board [or an AEL grant recipient](#) for allocated funds, on the basis of provisions as set forth in §800.73 and §800.74 of [this subchapter](#)~~the Commission rules~~.
- (6) Equal Base Amount--An amount equivalent to .10 [percent](#)% (one-tenth of one percent) of a total allocation, which shall be provided equally to each workforce area.
- (7) Hold Harmless/Stop Gain--A procedure that assures that a relative proportion of an allocation to a workforce area is not below 90 [percent](#)% of the corresponding proportion for the past two years, or that the current year proportion is not above 125 [percent](#)% of the prior two-year relative proportion.
- (8) Monthly expenditure report--A written or electronically submitted report by a Board [or an AEL grant recipient](#) that contains information regarding services for each category of funding allocated by the Commission, and in which the Board [or an AEL grant recipient](#) lists expenditures and obligations by category of funding.
- (9) Obligation--A debt established by a legally binding contract, letter of agreement, sub-grant award, or purchase order, which has been executed prior to the end of a contract period, for goods and services provided by the end of the contract period, and which will be liquidated 60 calendar days after the end of a contract period, unless such definition is superceded by federal requirements.
- (10) Relative proportion of the program year--The corresponding part of the program year that is used to compare expenditures. That is, if 50 [percent](#)% of the program year has transpired, then the relative proportion of the program year is 50 [percent](#)%.
- (11) WIA Formula Allocated Funds--Funds allocated by formula to workforce areas for each of the following separate categories of funding: WIA Adult, Dislocated Worker, and Youth.

§800.68 Adult Education and Literacy

- (a) [AEL funds available to the Commission to provide services under the federal Adult Education and Family Literacy Act \(AEFLA\), WIA Title II, together with associated state general revenue matching funds and federal TANF funds--together with any state general revenue funds appropriated as TANF maintenance-of-effort--will be](#)

used by the Commission as set forth in subsections (b) - (f) of this section.

(b) At least 82.5 percent of the federal funds constituting the total state award of AEFLA state grants--including amounts allotted to the eligible agency having a state plan, as provided by AEFLA §211(c) and amounts provided to the eligible agency under §243 for English Literacy/Civics (EL/Civics)--will be allocated by the Commission to the workforce areas. From the amount allotted to the eligible agency having a state plan, as provided by AEFLA §211(c), the Commission will allocate amounts to the workforce areas according to the established federal formula, as follows:

(1) 100 percent will be based on:

(A) the relative proportion of individuals residing within each workforce area who are at least 18 years of age, do not have a secondary school diploma or its recognized equivalent, and are not enrolled in secondary school, during the most recent period for which statistics are available;

(B) an equal base amount; and

(C) the application of a hold-harmless procedure (for any program year after Fiscal Year (FY) 2015).

(2) No more than 5 percent of the funds expended as part of this workforce area allocation shall be used for administrative costs, as defined by AEFLA, provided, however, that the Special Rule outlined in AEFLA §233(b) shall apply with effective justification, as appropriate.

(3) No more than 10 percent of this allocation shall be available for expenditure within each workforce area on the basis of the achievement of performance benchmarks, as set forth in subsection (f) of this section.

(c) At least 80 percent of the state general revenue matching funds associated with the allotment of federal funds to the eligible agency having a state plan, as provided by AEFLA §211(c) will be allocated by the Commission to the workforce areas according to the established federal formula, as follows:

(1) 100 percent will be based on:

(A) the relative proportion of individuals residing within each workforce area who are at least 18 years of age, do not have a secondary school diploma or its recognized equivalent, and are not enrolled in secondary school, during the most recent period for which statistics are available;

(B) an equal base amount; and

(C) the application of a hold-harmless procedure (for any program year after

FY 2015).

- (2) No more than 15 percent of the funds expended as part of this workforce area allocation shall be used for administrative costs, as defined by Commission policy.
 - (3) No more than 10 percent of this allocation shall be available for expenditure within each workforce area on the basis of the achievement of performance benchmarks, as set forth in subsection (f) of this section.
- (d) At least 82.5 percent of the federal funds provided to the eligible agency from amounts under AEFLA §243 for EL/Civics will be allocated by the Commission among the workforce areas according to the established federal formula, as follows:
- (1) The relative proportion based on:
 - (A) 65 percent of the average number of legal permanent residents during the most recent 10-year period, available from U.S. Citizenship and Immigration Services data; and
 - (B) 35 percent of the average number of legal permanent residents during the most recent three-year period, available from U.S. Citizenship and Immigration Services data;
 - (2) a base amount of 1 percent for each workforce area; and
 - (3) the application of a hold-harmless procedure (for any program year after FY 2015).
 - (4) No more than 5 percent of the funds expended as part of this workforce area allocation shall be used for administrative costs, as defined by AEFLA.
 - (5) No more than 10 percent of this allocation shall be available for expenditure within each workforce area on the basis of the achievement of performance benchmarks, as set forth in subsection (f) of this section.
- (e) At least 80 percent of federal TANF funds associated with the AEL program-- together with any state general revenue funds appropriated as TANF maintenance-of-effort--will be allocated by the Commission to the workforce areas according to a need-based formula, as follows:
- (1) 100 percent will be based on:
 - (A) the relative proportion of the unduplicated number of TANF adult recipients with educational attainment of less than a secondary diploma, during the most recently completed calendar year;

(B) an equal base amount; and

(C) the application of a hold-harmless procedure (for any program year after FY 2015).

(2) No more than 15 percent of the funds expended as part of this workforce area allocation shall be used for administrative costs, as defined by federal regulations and Commission policy.

(3) No more than 10 percent of this allocation shall be available for expenditure within each workforce area on the basis of the achievement of performance benchmarks, as set forth in subsection (f) of this section.

(f) AEL performance accountability benchmarks shall be established to coincide with performance measures and reports, or other periods, as determined by the Commission. Levels of performance shall, at a minimum, be expressed in an objective, quantifiable, and measureable form, and show continuous improvement.

§800.71. General Deobligation and Reallocation Provisions.

(a) Purpose. The purpose of this rule is to promote effective service delivery, financial planning, and management to ensure full utilization of funding, and to reallocate funds to populations in need.

(b) Scope. Sections 800.71 - 800.77 of this subchapter shall apply to funds provided to workforce areas under a contract between the Board or an AEL grant recipient and the Commission for the following categories of funding:

(1) Adult Education and Literacy

(2)(+)Child Care

(3)(2)Choices

(4)(3)Employment Service

(5)(4)SNAP E&T

(6)(5)Project RIO

(7)(6)WIA Alternative Funding for Statewide Activities

(8)(7)WIA Alternative Funding for One-Stop Enhancements

§800.72. Reporting Requirements.

- (a) A Board or an AEL grant recipient shall submit a monthly financial report, including accrued expenditures and obligations, on or before the 20th calendar day of the following month that list information as required by the Commission for the reporting period.
- (b) The Commission may require that a Board or an AEL grant recipient amend expenditure reports as the result of Commission reviews, audits, or other evaluations.
- (c) A Board or an AEL grant recipient shall submit a contract closeout settlement package on or before 60 days following the end of the contract period.
- (d) The Commission may suspend payments, advances, or reimbursements to Boards or an AEL grant recipient in the cash draw system if required financial reports or contract closeout settlement packages are not submitted by the deadline.
- (e) The Agency's executive director~~Executive Director~~ may approve a Board's or an AEL grant recipient's request of extension for the submission of a required financial report or contract closeout settlement package, if such extension request is received on a timely basis with sufficient justification.

§800.78. Midyear Deobligation of AEL Funds.

- (a) The Commission may deobligate funds from an AEL grant recipient during the program year if an AEL grant recipient is not meeting the expenditure thresholds set forth in subsection (b) of this section, provided, however, that the requirements of subsection (d) of this section are satisfied.
 - (1) AEL grant recipients that fail to meet the expenditure thresholds set forth in subsection (b) of this section at the end of months five, six, seven, or eight of the program year (i.e., midyear) will be reviewed to determine the causes for the underexpenditure of funds, except as set forth in subsection (e) of this section.
 - (2) The Commission shall not deobligate more than the difference between an AEL grant recipient's actual expenditures and the amount corresponding to the relative proportion of the program year.
 - (3) The Commission shall not deobligate funds from an AEL grant recipient that failed to meet the expenditure thresholds set forth in subsection (b) of this section, if within 60 days prior to the potential deobligation period the Commission executes a contract amendment for a supplemental allocation or reallocation of funds in the same program funding category.
- (b) The Commission may deobligate funds from an AEL grant recipient midyear, as set

forth in subsection (a) of this section, if an AEL grant recipient fails to achieve the expenditure of an amount corresponding to 90 percent or more of the relative proportion of the program year.

(c) An AEL grant recipient subject to deobligation for failure to meet the requirements set forth in this section shall, upon request by the Commission, submit a written justification. For an AEL consortium, a copy must be provided to all AEL consortium members. The written justification shall provide sufficient detail regarding the actions an AEL grant recipient will take to address its deficiencies, including:

(1) expansion of services proportionate to the available resources;

(2) projected service levels and related performance;

(3) reporting outstanding obligations; and

(4) any other factors an AEL grant recipient would like the Commission to consider.

(d) Any amounts deobligated from an AEL grant recipient must be made available as a first priority to any other AEL grant recipient(s) providing AEL services within the same workforce area that meet the requirements of §800.80(a) of this subchapter, upon receipt and approval by the Commission of an acceptable plan.

(e) To the extent this section may be found not to comply with federal requirements, or should any related federal waivers expire, the Commission will be subject to federal requirements in effect, as applicable.

§800.79. Voluntary Deobligation of AEL Funds.

To request a voluntary deobligation of funds allocated to the workforce area, an AEL grant recipient's chief executive officer shall submit a written request to the Commission. For an AEL consortium, a copy must be provided to all AEL consortium members. Any amounts voluntarily deobligated from an AEL grant recipient must be made available as a first priority to any other AEL grant recipient(s) providing AEL services within the same workforce area that meet the requirements of §800.80(a) of this subchapter, upon receipt and approval by the Commission of an acceptable plan.

§800.80. Reallocation of AEL Funds.

(a) For an AEL grant recipient to be eligible to receive deobligated AEL funds, the Commission may consider whether the AEL grant recipient:

(1) has met targeted expenditure levels as required by §800.78(a) - (b) of this subchapter, as applicable, for that period;

- (2) has not expended or obligated more than 100 percent of the workforce area's allocation for the category of funding;
 - (3) has demonstrated that expenditures conform to cost category limits for funding;
 - (4) has demonstrated the need for and ability to use additional funds;
 - (5) is current on expenditure reporting;
 - (6) is current with all single audit requirements; and
 - (7) is not under sanction.
- (b) Any amounts deobligated or voluntarily deobligated from an AEL grant recipient shall be made available as a first priority to any other AEL grant recipients providing AEL services within the same workforce area that meet the requirements of subsection (a) of this section, upon receipt and approval by the Commission of an acceptable plan. Following the determination that any such plan has not been determined to be acceptable, the Commission may consider an AEL grant recipient satisfying the requirements of subsection (a) of this section, upon receipt and approval by the Commission of an acceptable plan.