

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

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3 **ADOPTED 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*.**
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7 **ON SEPTEMBER 21, 2017, THE TEXAS WORKFORCE COMMISSION ADOPTED THE**
8 **BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.**

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10 Estimated date of publication in the *Texas Register*: **October 6, 2017**

11 The rules will take effect: **October 11, 2017**

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13 The Texas Workforce Commission (TWC) adopts amendments to the following section of
14 Chapter 802, relating to the Integrity of the Workforce System, without changes, as published in
15 the August 4, 2017, issue of the *Texas Register* (42 TexReg 3866):

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17 Subchapter D. Agency Monitoring Activities, §802.65

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

20 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND**
21 **RESPONSES**

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

24 The purpose of the adopted Chapter 802 rule change is to facilitate the timely issuance of TWC
25 reports following compliance reviews of Local Workforce Development Boards (Boards), Adult
26 Education and Literacy (AEL) grant recipients, and TWC grantees or contractors. The rule
27 change ensures that monitored entities maintain full due process in responding to and resolving
28 any findings or questioned costs. Finally, the rule change clarifies to whom TWC monitoring
29 reports are sent.

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31 Currently, §802.65 requires that, following a monitoring visit, the TWC's Subrecipient
32 Monitoring department (SRM) take the following actions:

33 --If no issues or questioned costs are identified, issues a management letter and closes the
34 review;

35 --If there are issues, issues a draft report, which, if the monitored entity responds with
36 documentation resolving the finding, prompts SRM to issue a management letter to close the
37 review; or

38 --If there are issues and the monitored entity concurs with the draft report finding, issues a final
39 report.

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41 Issuance of the final report transfers monitoring findings and questioned costs to the audit
42 resolution process.

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44 The draft report, which is not required under the uniform grant guidance provisions of 2 CFR
45 Part 200, was intended to allow monitored entities the opportunity to provide input into potential
46 administrative findings and questioned costs, which would then be considered by SRM before

1 issuance of the final report. As a practical matter, the draft report has become *de facto* audit
2 resolution and has the effect of delaying the final report. Additionally, if findings or questioned
3 costs remain in the final report, audit resolution simply resumes.

4
5 In contrast, when the US Department of Labor (DOL) audits grantees and subrecipients, DOL's
6 audit team issues one monitoring report and gives the monitored entity 45 calendar days to
7 address the findings. When all findings have been resolved, DOL issues a monitoring closure
8 letter. This approach provides a streamlined and efficient transition between monitoring
9 activities, report issuance, and final audit resolution.

11 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND** 12 **RESPONSES**

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

16 **SUBCHAPTER D. AGENCY MONITORING ACTIVITIES**

17 **TWC adopts the following amendments to Subchapter D:**

19 **§802.65. Agency Monitoring Reports and Resolution**

20 Amended §802.65(a) stipulates that following monitoring activities, the TWC's monitoring
21 department will issue a single monitoring report that summarizes the results of those activities. If
22 no administrative findings or questioned costs are noted as a result of the audit, the monitoring
23 report will be a management letter.

24
25 The amendment clarifies that only Boards, AEL grant recipients, and TWC grantees or
26 contractors will be issued the monitoring report.

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28 With regard to Boards, the monitoring report will be provided to the Board's chair and executive
29 director. The monitoring report will also be provided to the designated representatives of the
30 federal oversight agencies responsible for the programs reviewed by the TWC's monitoring staff
31 to ensure compliance with any and all federal reporting requirements. The monitoring report will
32 also be provided to the three-member Commission and TWC executive staff.

33
34 Amended §802.65(b) designates the initial resolution contact as the initial resolution notification.
35 The amendment clarifies that only Boards, AEL grant recipients, and TWC grantees or
36 contractors will be issued the notification. The amendment also stipulates that the recipient of
37 the notification has 45 calendar days from the date the notification was mailed in which to
38 respond.

39
40 Amended §802.65(b)(1)(B) clarifies that the TWC's audit resolution department will continue to
41 coordinate with the monitored entity in the event that findings are not resolved and remain open
42 until the following year's audit.

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44 New §802.65(b)(3)(A) clarifies that the TWC may impose corrective actions under Chapter 802,
45 Subchapter G, at any time during the resolution process. It is the intent of this amendment to
46 stipulate that the TWC is not precluded from imposing corrective action allowed under

1 Subchapter G, regardless of the status of TWC monitoring and resolution activities or reports
2 thereto.

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4 Amended §802.65(c) clarifies that only Boards, AEL grant recipients, and TWC grantees or
5 contractors will be issued an initial determination.

6
7 Finally, amended §802.65(d) clarifies that only Boards, AEL grant recipients, and TWC grantees
8 or contractors will be issued a final determination.

9
10 **COMMENT:**

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12 One commenter, a Board, did not concur with removing the draft report before issuing a
13 final report. The commenter did not consider the draft report to be the de facto report.
14 The commenter expressed concern that the lack of a draft report would cause unnecessary
15 concern by reviewers who consider the report as final. The commenter felt that removing
16 the draft report also removed the opportunity to review and comment on the findings
17 prior to the final report being sent. Finally, the commenter felt that the draft report also
18 serves as a record of agreement that all individuals involved understand the issues prior to
19 the final report being produced.

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21 **RESPONSE:**

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23 The Commission reiterates its conclusion that under the current process, the back-and-
24 forth review between SRM and the auditee prior to report issuance is, in fact, *audit*
25 *resolution*, and has the effect of delaying the final report. The Commission respectfully
26 disagrees that the draft report serves as a "record of agreement" among the parties,
27 regarding issues identified during the monitoring review. The draft report serves as notice
28 of findings, to which the auditee responds with concurrence or non-concurrence, and
29 generally includes actions undertaken by the auditee. Those actions constitute the audit
30 resolution.

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32 Under the new rules, the auditee will still retain the ability to dispute findings with which
33 it does not agree, and through the audit resolution process, those findings may be
34 removed and an audit resolution closure letter issued.

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36 Finally, the process outlined by the amended rules mirrors the one used by DOL, to
37 which the commenter would be subject if the Board were selected for an audit by DOL.

38
39 **COMMENTS WERE RECEIVED FROM:**

40 Brazos Valley Workforce Development Board

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

1 The rules are adopted under Texas Labor Code §301.0015, which provides TWC with the
2 authority to adopt, amend, or repeal such rules as it deems necessary for the effective
3 administration of TWC services and activities.

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5 The adopted rules affect Texas Labor Code, Title 4.

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

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3 **SUBCHAPTER D. AGENCY MONITORING ACTIVITIES**

4
5 **§802.65. Agency Monitoring Reports and Resolution.**

6 (a) Monitoring Report. The Agency's monitoring department shall issue a monitoring report
7 summarizing the results of monitoring activities. The report shall include the
8 observations, findings, questioned costs identified, and recommendations of the
9 monitoring team to the Board, AEL grant recipient, or Agency grantees or contractors. If
10 there are no administrative findings or questioned costs identified as a result of the
11 monitoring review, a management letter will be issued. A monitoring report or
12 management letter issued to a Board will be provided to the following:

- 13
14 (1) Board chair
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16 (2) Board executive director
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18 (3) Designated representatives of the US Department of Health and Human
19 Services
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21 (4) Designated representatives of the US Department of Labor
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23 (5) Texas Workforce Commissioners
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25 (6) Agency executive staff

26
27 (b) Initial Resolution Notification. Based on the monitoring report, the Agency's audit
28 resolution department shall issue an initial resolution notification, which notifies a Board,
29 AEL grant recipient, or Agency grantee or contractor of administrative findings and
30 questioned costs. The recipient of an initial resolution notification shall have 45 calendar
31 days from the date the notification is mailed to respond.

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33 (1) Administrative Findings.

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

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38 (B) If the administrative findings set forth in the initial resolution notification are not
39 resolved, the findings remain open and the Agency's audit resolution department
40 continues to coordinate with the entity until the following year's audit to ensure
41 follow-up.

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43 (2) Questioned Costs.

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

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(B) If the questioned costs set forth in the initial resolution notification are not resolved, an initial determination is issued.

(3) Corrective Actions. The Agency may also impose corrective actions under Subchapter G of this chapter at any time during the resolution process.

(c) Initial Determination. The Agency's audit resolution department shall issue an initial determination notifying a Board, AEL grant recipient, or Agency grantee or contractor 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, AEL grant recipient, or Agency grantee or contractor 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.