

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

2
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*.**
6

7 **ON *DECEMBER 1, 2020*, THE TEXAS WORKFORCE COMMISSION ADOPTED THE**
8 **BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.**
9

10 Estimated date of publication in the *Texas Register*: **December 18, 2020**
11 The rules will take effect: **December 21, 2020**
12

13 The Texas Workforce Commission (TWC) adopts amendments to the following sections of
14 Chapter 802, relating to the Integrity of the Texas Workforce System, *without* changes, as
15 published in the October 2, 2020, issue of the *Texas Register* (45 TexReg 6984):
16

17 Subchapter I. Workforce Awards, §§802.161 - 802.163 and §802.165
18

19 TWC adopts the repeal of the following sections of Chapter 802, relating to the Integrity of the
20 Texas Workforce System, *without* changes, as published in the October 2, 2020, issue of the
21 *Texas Register* (45 TexReg 6984):
22

23 Subchapter I. Workforce Awards, §802.164 and §§802.166 - 802.169
24

25 TWC adopts the following new section to Chapter 802, relating to the Integrity of the Texas
26 Workforce System, *without* changes, as published in the October 2, 2020, issue of the *Texas*
27 *Register* (45 TexReg 6984):
28

29 Subchapter I. Workforce Awards, §802.166 and §802.167
30

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

32 The purpose of the Chapter 802 rule change is to amend Subchapter I.
33

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

40 The rules in Chapter 802, Subchapter I have been in place since February 2011. The services
41 administered by TWC have since expanded, and federal regulations authorizing many of TWC's
42 programs have changed. Chapter 802 rule amendments were last adopted in February 2014 to
43 address the transfer of the AEL program in 2013 and included provisions related to incentive
44 awards. Additionally, in 2014, the president signed into law the Workforce Innovation and
45 Opportunity Act (WIOA), which repealed and replaced the Workforce Investment Act of 1998
46 (WIA). WIA required that states provide incentive grants to Boards as a required statewide

1 activity. WIOA changed the classification of incentive grants from a required statewide activity
2 to an allowable statewide activity. Finally, in 2016, the legislature dissolved the Texas
3 Department of Assistive and Rehabilitative Services and transferred its workforce-related
4 programs to TWC, thus creating TWC's Vocational Rehabilitation Division.

5
6 Those changes are just a few examples of how the Texas workforce system has evolved into a
7 more robust, integrated, and dynamic network comprising many partners, including Boards, AEL
8 grant recipients, community colleges, and employers. The awards process has also evolved and
9 must remain flexible to ensure its relevance in encouraging, recognizing, and rewarding
10 workforce system partners for exceeding expectations and creating innovations in a dynamic and
11 ever-changing environment.

12
13 Subchapter I, "Incentive Awards" is renamed "Workforce Awards" to more accurately describe
14 the amended subchapter's broader scope of recognizing Boards, AEL grant recipients, and other
15 workforce system partners for their innovative contributions in exceeding workforce service-
16 delivery goals and objectives.

17
18 Subchapter I is also amended to clarify that the Commission has the authority to issue any award
19 in accordance with the award's programmatic and funding-source requirements.

20
21 Additionally, Subchapter I is amended to specify that funding for any monetary award must
22 comply with the requirements associated with the award's funding authority.

23 24 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

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

27 28 **SUBCHAPTER I. WORKFORCE AWARDS**

29 **TWC adopts the following amendments to Subchapter I:**

30 31 **§802.161. Scope and Purpose**

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

34 35 **§802.162. Definitions**

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

39 40 **§802.163. Types of Workforce Awards**

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

1 time. Amended §802.163 incorporates relevant information pertaining to performance awards
2 from repealed §802.166, Performance Awards.

3
4 **§802.164. Data Collection**

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

7
8 **§802.165. Workforce Awards Recipient Classification**

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

11
12 **§802.166. Performance Awards**

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

16
17 **§802.166. Notification**

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

21
22 **§802.167. Workforce Investment Act Local Incentive Awards**

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

26
27 **§802.167. Extraordinary Circumstances**

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

30
31 **§802.168. Job Placement Incentive Awards**

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

34
35 **§802.169. AEL Incentive Awards**

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

39
40 TWC hereby certifies that the rules have been reviewed by legal counsel and found to be within
41 TWC's legal authority to adopt.

42
43 **PART III. PUBLIC COMMENT**

44 The public comment period closed on November 2, 2020. No comments were received.

1 **PART IV. STATUTORY AUTHORITY**

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

5
6 The rules implement those provisions within WIOA for permissible statewide activities,
7 including, but not limited to, WIOA, §§128, 129, 133, and 134.

8

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

2
3 **SUBCHAPTER I. WORKFORCE AWARDS**

4
5 **§802.161. Scope and Purpose.**

6 The purpose of the workforce awards is to allow the Agency's three-member Commission
7 (Commission) to establish monetary and nonmonetary awards to encourage innovation
8 and to recognize and reward Local Workforce Development Boards (Boards), Adult
9 Education and Literacy (AEL) grant recipients, and other Texas workforce system
10 partners for exceptional performance in carrying out the workforce system's obligation to
11 help Texas employers, employees, job seekers, and students succeed economically.

12
13 **§802.162. Definitions.**

14
15 The following words and terms when used in this chapter shall have the following
16 meanings, unless the context clearly indicates otherwise.

- 17
18 (1) Allocation of Funds--The total yearly funds initially identified for allocation to
19 a local development workforce area (workforce area) for all programs. This
20 does not include consideration of adjustments in funding that the Commission
21 made to specific programs for the purposes of reallocating or redistributing
22 those funds. This may include new allocations or distributions that result from
23 changes in law or new funding made available to the workforce areas during
24 the year.
- 25
26 (2) Classification--A grouping of Boards, AEL grant recipients, or other
27 workforce system partners with one or more common characteristics (for
28 example, size) for the purpose of evaluating performance and issuing
29 incentive, quality-improvement, or other awards, as determined by the
30 Commission.
- 31
32 (3) Extraordinary Circumstances--Conditions that may have an impact on the
33 determination of which Boards, AEL grant recipients, or other workforce
34 system partners may receive, or be excluded from receiving, workforce
35 awards, which may include, but are not limited to, matters such as serious
36 unforeseen events, unresolved audit or monitoring findings, sanctions,
37 unanticipated changes in economic conditions, disasters, legislative changes, or
38 other occurrences directly impacting the Commission, Boards, AEL grant
39 recipients, or the Texas workforce system.
- 40
41 (4) Workforce Awards--Awards presented by the Commission to workforce
42 system partners within the parameters of this subchapter to support activities
43 allowable under programmatic funding sources.
- 44
45 (5) Workforce System Partner--For the purposes of workforce awards, any entity
46 that provides workforce services to workforce system customers.

1
2 **§802.163. Types of Workforce Awards.**
3

4 The Commission shall determine:
5

- 6 (1) awards to be issued, including award categories and names;
7
8 (2) monetary amounts, if any, for each award in accordance with the funding
9 source's allowability for such purposes;
10
11 (3) the number of awards to be presented for each category;
12
13 (4) the basis for award criteria, such as performance data, an application, a
14 nomination, any combination thereof, or any other criteria;
15
16 (5) the classification, if any, of workforce system award recipients for comparison
17 purposes;
18
19 (6) the method by which each award will be evaluated; and
20
21 (7) other criteria as determined by the Commission.
22

23 **§802.165. Workforce Award Recipient Classification.**
24

- 25 (a) The Commission may group workforce system partners, including, but not limited
26 to, Boards and AEL grant recipients, in classifications for comparison purposes to
27 determine workforce award recipients.
28
29 (b) In classifying potential workforce award recipients, the Commission may group
30 potential award recipients based on similarities or differences among the potential
31 award recipients relating to:
32
33 (1) allocations of funds;
34
35 (2) prior performance;
36
37 (3) demographic, economic, or other characteristics of the individual workforce
38 areas or service-delivery areas;
39
40 (4) size; or
41
42 (5) other characteristics as determined by the Commission.
43

44 **§802.166. Notification.**
45

- 1 (a) The Agency shall notify Boards, AEL grant recipients, and other workforce system
2 partners, as applicable, of the current year's awards classifications, criteria, deadlines,
3 and methods by which awards information may be submitted to the Agency for
4 consideration.
5
- 6 (b) The notice required under this section shall be provided by the end of the calendar
7 year preceding the presentation of awards.
8
- 9 (c) The Commission may add, modify, or remove an award or award type after the
10 notification deadline when necessary due to extraordinary circumstances. Where the
11 Commission takes such action, the Agency shall promptly notify Boards, AEL grant
12 recipients, and other workforce system partners, as applicable, of the action taken
13 and any changes to the previously noticed awards.
14

15 **§802.167. Extraordinary Circumstances.**
16

17 Under extraordinary circumstances, as defined in this subchapter, the Commission may
18 modify eligibility for and assignment of awards as necessary based on factors that the
19 Commission identifies.