

1 **Discussion Paper – COVID-19 Skills Funding – Additional Program Parameters**

2 **Background**

3 At the April 14, 2020 meeting, Commissioners approved a series of funding recommendations
4 related to a variety of funding streams including the Skills Development Fund (SDF). As staff
5 have worked quickly to implement the new application process, questions around eligible
6 business partners/employers, inclusion of small businesses and prevailing wage have emerged
7 for further consideration.

8 **Issues**

9 *Public Organizations*

10 Publicly funded organizations impacted by COVID-19 are interested in providing skills training to
11 their employees. The Skills Development Fund (SDF) statute, Labor Code Sec. 303, does not
12 explicitly prohibit training for publicly funded organizations; however, there is a requirement
13 for reporting outcomes if they do not meet the eligibility requirements set out in Labor Code
14 Sec. 303.006(a)(3) (which incorporates Labor Code Chapter 204 by reference). There are also
15 reporting requirements in the SDF rule, 40 Texas Administrative Code (TAC) Section 803.11. If
16 the Commission approves training for public health organizations, it may skew outcomes
17 numbers, although staff are collecting training information for the COVID-19 SDF grants.

18 Included in the SDF rule, TAC Section 803, there are multiple references to training projects
19 customized for private business, business consortium or trade unions. There is no specific
20 mention of public organizations, therefore the applicable sections of the SDF rule must be
21 waived or suspended for public organizations to be eligible for SDF funds.

22 Labor Code Section 401.003 defines an “employer” as “a person that employs one or more
23 employees;” therefore, if the Commission includes all employers that are public entities, it
24 would include a multitude of organizations such as ISDs, cities, counties, and others. This is
25 likely to be a very large group of publicly funded organizations. Therefore, for the purposes of
26 the SDF COVID grants, the Commission may want to expand eligibility to include healthcare
27 employers where a critical need for the medical workforce exists including publicly funded
28 hospitals, which are continuing to experience a significant demand for all types of healthcare
29 workers.

30 *Small Businesses*

31 Small businesses have been severely impacted by COVID-19. Currently, only the full-time wage-
32 earning employees (reported on W-2s) of small businesses are eligible to participate in SDF
33 training projects. However, due to COVID-19, the demand for training for individuals at all

34 levels of small businesses has increased. Owners who do not pay themselves a wage or a salary
35 are also in need of training to ensure the business' survival. It is more vital now than ever to
36 ensure TWC's grant opportunities reach and impact the entire small business organization for
37 the benefit of the Texas economy.

38 In addition to the owners of small businesses, sole proprietors and independent contractors are
39 also currently not eligible for SDF COVID grants. For purposes of these grants, sole
40 proprietorships include independent contractors meaning those individuals providing a service
41 to another business entity denoting the relationship between the worker and the person
42 receiving the services.

43 Sole proprietors are essential to the economy in Texas but are also one of the most vulnerable
44 and impacted business populations due to the COVID-19 Pandemic. The TWC training
45 programs, and particularly the SDF COVID-19 Training Initiative, could provide needed training
46 that will sustain their businesses, or allow for them to reopen and return to full employment.

47 Using data collected from the Census Bureau, 2017 "County Business Patterns" data set shows
48 more than 141,000 sole proprietorships operate in Texas (all industry sectors). Sole
49 proprietorships exist in several key industries targeted by the COVID-19 SDF program, including,
50 but not limited to manufacturing (4,453), transportation and warehousing (5,198), and
51 healthcare (15,913). The passage of the Federal Coronavirus Aid, Relief, and Economic Security
52 Act (CARES Act) recognized sole proprietors for certain benefits, highlighting these groups'
53 economic vulnerability during the current pandemic. Including these entities as eligible
54 participants in the COVID-19 Training Initiative will provide vital upskilling and growth
55 opportunities to Texas businesses in need.

56 Section 803.2(4) of the SDF Rule defines Private Partner as, "a person, sole proprietorship,
57 partnership, corporation, association, consortium, or private organization that enters into a
58 partnership for a customized training project with: (A) a public community college; (B) a
59 technical college; (C) TEEX; or (D) a community-based organization only in partnership with the
60 public community and technical colleges or TEEX."

61 While the SDF rules recognize that sole proprietorships are eligible business partners, it is not
62 clear that the "owner" of the sole proprietorship is eligible to participate in an SDF training.
63 Therefore, the Commission may choose to allow "owners" of sole proprietorships to participate
64 in SDF training due to their prospective growth opportunities and benefit to the Texas
65 economy.

66 Although the term Independent Contractor is not cited in the Statute or Rule, we think this
67 growing group of individuals are essential members of the workforce. They are also currently
68 eligible for unemployment insurance as a result of the CARES Act. As the economy re-opens

69 many of these individuals will need to be upskilled, which will allow them to continue to thrive
70 as independent contractors or return to traditional employment with more valuable skills. We
71 also recommend that these individuals be allowed to participate in the COVID-19 SDF grants.

72 *Prevailing Wage Threshold*

73 Several applicants have raised an issue regarding prevailing wage requirements for entry-level
74 positions. These positions do not necessarily meet the 25th percentile level for prevailing wage
75 determination, but they are in demand occupations that are critical for COVID-19 response and
76 include jobs such as CNAs, LVNs and RNs.

77 After reviewing TWC's LMCI Wage Data, many of these occupations would be eligible using the
78 10th percentile wage level, and staff are interested in encouraging training for new and needed
79 jobs.

80 The average wage data for the SDF may be impacted, however, these impacts will be noted in
81 the annual SDF report along with the documented need for these occupations.

82 **Decision Points**

83 Staff seek Commission approval to allow the Executive Director to waive the following sections
84 regarding private business involvement in the SDF rule: 803.2(1) and (4), 803.3(a), 803.14(a),
85 (c), (f)(5), (f)(6) and (f)(9), and 803.15(a), in the interest of furthering skills training for Texans
86 impacted by COVID-19.

87 In addition, staff request approval of the following flexibilities for the SDF COVID-19 grants:

- 88 1) expand employer eligibility to include publicly funded hospitals where a critical
89 workforce need exists during the pandemic,
- 90 2) expand eligibility for the SDF COVID-19 training to include, small business owners and
91 sole proprietors operating in demand sectors; and,
- 92 3) adjust the prevailing wage threshold to allow SDF participants who are trained for new
93 jobs to meet the 10th percentile wage level for prevailing wage determination.

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