

1 **CHAPTER 800. GENERAL ADMINISTRATION**

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 The Texas Workforce Commission (TWC) adopts amendments to the following section of
8 Chapter 800, relating to General Administration, *without* changes, as published in the September
9 25, 2020, issue of the *Texas Register* (45 TexReg 6758):

10
11 Subchapter B. Allocations, §800.68

12
13 TWC adopts the following new section to Chapter 800, relating to General Administration,
14 *without* changes, as published in the September 25, 2020, issue of the *Texas Register* (45 TexReg
15 6758):

16
17 Subchapter F. Interagency Matters, §800.206

18
19 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

20 House Bill (HB) 3 and HB 1949, enacted by the 86th Texas Legislature, Regular Session (2019),
21 require TWC to develop rules to implement that legislation.

22
23 HB 3, §1.046 added Texas Education Code, §48.302, concerning Subsidy for High School
24 Equivalency Examination for Certain Individuals. This section requires the Texas Education
25 Agency (TEA) to enter into a memorandum of understanding with TWC when transferring funds
26 to provide a subsidy for the cost of a high school equivalency exam for individuals who are 21
27 years of age or older. Texas Education Code, §48.302 also requires TWC to develop rules
28 addressing program implementation and eligibility requirements for this subsidy program, which
29 TWC adopts in new 40 TAC Chapter 805, Subchapter E, High School Equivalency Subsidy
30 Program.

31
32 Additionally, HB 1949 amended Texas Labor Code, §315.007, Performance Incentive Funding,
33 dedicated to the process for awarding performance-based funds to Adult Education and Literacy
34 (AEL) grantees, and added Texas Labor Code, §315.007(c), (d), and (e) to include new
35 performance-based funding criteria for AEL programs to receive performance-based funds.
36 These new criteria relate to enrollment and performance benchmarks for enrollment in a high
37 school equivalency program or postsecondary ability-to-benefit program and achievement
38 measures for AEL students enrolled in such programs by the end of the program year.

39
40 Both HB 3 and HB 1949 went into effect September 1, 2019.

41
42 To implement HB 1949, on October 8, 2019, TWC's three-member Commission (Commission) approved
43 the performance-based funding criteria for AEL Program Year 2019 - 2020 (PY'19 - '20) and also approved
44 the performance criteria for performance-based funding in PY'20 - '21. Additionally, the Commission
45 approved a performance-based measure for grant recipients meeting milestones toward enrollment and the

1 performance measures required under HB 1949 and requested that rules be developed to address this
2 measure.

3
4 For the high school equivalency subsidy program, TEA appropriated \$750,000 each year of the 2020 -
5 2021 biennium. In early 2020, TEA and TWC worked with the two high school equivalency test publishers
6 approved to operate in Texas, Pearson for the GED and ETS for the HiSET, to create a process that would
7 be administratively efficient for programs managing the distribution of the subsidy at the local level to
8 eligible and test-ready individuals. On February 10, 2020, TEA and TWC entered into an interagency
9 contract to transfer funds to TWC to implement this program. While TWC moved forward to develop rules,
10 the COVID-19 pandemic impacted TWC's ability to implement the program.

11
12 On May 8, 2020, TWC submitted a letter to the Legislative Budget Board requesting any
13 unexpended and unobligated funds for the subsidy program from the current fiscal year be
14 transferable to the next fiscal year beginning September 1, 2020. In this request, TWC noted that
15 the reasons it had been unable to expend funding for this program were the lack of remote testing
16 options from Pearson and ETS (both of which were in early stages of implementing remote
17 testing guidelines) and the closures of most high school equivalency testing centers and their
18 unknown future reopening status. Additionally, TWC noted that all appropriated funds for the
19 subsidy program would be fully obligated by the end of the biennium.

20 21 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

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

24 25 **SUBCHAPTER B. ALLOCATIONS**

26 **TWC adopts the following amendments to Subchapter B:**

27 28 **§800.68. Adult Education and Literacy**

29 Section 800.68 is amended to add criteria for performance-based funding benchmarks for high
30 school equivalency and postsecondary ability-to-benefit enrollment and achievements in new
31 §800.68(g) and includes a definition for "postsecondary ability-to-benefit program." New
32 language allows grant recipients that meet milestones toward the performance measures outlined
33 in HB 1949 to receive performance-based funding. It further clarifies that the Commission will
34 approve the award of AEL grant funds, as is required under HB 1949 and other guidance
35 received from the legislature. Additionally, two technical edits are made to change an outdated
36 reference from Workforce Investment Act to the Workforce Innovation and Opportunity Act
37 (WIOA) and to correct a misspelled word.

38
39 As the definition of "postsecondary ability-to-benefit program" in HB 1949 does not align with
40 the federal definition for "Pell Grant Ability-to-Benefit," the rule emphasizes that this definition
41 relates to performance-based funding criteria for AEL programs and is modified to align with
42 federal AEL performance measure definitions under WIOA.

43
44 The performance funding benchmarks require that 25 percent of all participants served in the
45 program year be enrolled in a high school equivalency subsidy program or a postsecondary

1 ability-to-benefit program, and at least 70 percent of those participants who exited to achieve a
2 high school equivalency or recognized postsecondary credential.

3
4 **SUBCHAPTER F. INTERAGENCY MATTERS**

5 **TWC adopts the following new section to Subchapter F:**

6
7 **§800.206. Interagency Contract with the Texas Education Agency for High School**
8 **Equivalency Subsidy Program**

9 New §800.206 adopts by reference the terms of an interagency contract entered into with the
10 TEA, as required by Texas Education Code, §48.302, relating to the transfer of funds to
11 implement a high school equivalency subsidy program, set out in adopted 40 TAC Chapter 805,
12 Subchapter E, §§805.71 - 805.73.

13
14 TWC hereby certifies that the rules have been reviewed by legal counsel and found to be within
15 TWC's legal authority to adopt.

16
17 **PART III. PUBLIC COMMENT**

18 The public comment period closed on October 26, 2020. No comments were received.

19
20 **PART IV. STATUTORY AUTHORITY**

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

24
25 The adopted rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.
26

1
2 (1) 100 percent will be based on:

3
4 (A) the relative proportion of individuals residing within each workforce area
5 who are at least 18 years of age, do not have a secondary school diploma
6 or its recognized equivalent, and are not enrolled in secondary school,
7 during the most recent period for which statistics are available;

8
9 (B) an equal base amount; and

10
11 (C) the application of a hold-harmless/stop-gain procedure.

12
13 (2) No more than 15 percent of the funds expended as part of this workforce area
14 allocation shall be used for administrative costs, as defined by Commission
15 policy.

16
17 (3) No more than 10 percent of this allocation shall be available for expenditure
18 within each workforce area on the basis of the achievement of performance
19 benchmarks, as set forth in subsection (f) of this section.

20
21 (d) At least 82.5 percent of the federal funds provided to the eligible agency from
22 amounts under AEFLA §243 for EL/Civics will be allocated by the Commission
23 among the workforce areas according to the established federal formula, as follows:

24
25 (1) The relative proportion based on:

26
27 (A) 65 percent of the average number of legal permanent residents during the
28 most recent 10-year period, available from U.S. Citizenship and
29 Immigration Services data; and

30
31 (B) 35 percent of the average number of legal permanent residents during the
32 most recent three-year period, available from U.S. Citizenship and
33 Immigration Services data;

34
35 (2) a base amount of 1 percent for each workforce area; and

36
37 (3) the application of a hold-harmless/stop-gain procedure.

38
39 (4) No more than 5 percent of the funds expended as part of this workforce area
40 allocation shall be used for administrative costs, as defined by AEFLA.

41
42 (5) No more than 10 percent of this allocation shall be available for expenditure
43 within each workforce area on the basis of the achievement of performance
44 benchmarks, as set forth in subsection (f) of this section.

1 (e) At least 80 percent of federal TANF funds associated with the AEL program--
2 together with any state general revenue funds appropriated as TANF maintenance-
3 of-effort--will be allocated by the Commission to the workforce areas according to a
4 need-based formula, as follows:

5
6 (1) 100 percent will be based on:

7
8 (A) the relative proportion of the unduplicated number of TANF adult
9 recipients with educational attainment of less than a secondary diploma
10 during the most recently completed calendar year;

11
12 (B) an equal base amount; and

13
14 (C) the application of a hold-harmless/stop-gain procedure.

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

19
20 (3) No more than 10 percent of this allocation shall be available for expenditure
21 within each workforce area on the basis of the achievement of performance
22 benchmarks, as set forth in subsection (f) of this section.

23
24 (f) AEL performance accountability benchmarks shall be established to coincide with
25 performance measures and reports, or other periods, as determined by the
26 Commission. Levels of performance shall, at a minimum, be expressed in an
27 objective, quantifiable, and measurable ~~measureable~~ form, and show continuous
28 improvement.

29
30 (g) Performance accountability benchmarks shall:

31
32 (1) include measures for high school equivalency program or ability-to-benefit
33 program enrollment and achievement, as outlined in paragraph (2) of this
34 subsection. A postsecondary ability-to-benefit program, as outlined in
35 paragraphs (2) and (3) of this subsection, is a postsecondary education or
36 training program that:

37
38 (A) results in a recognized postsecondary credential; and

39
40 (B) enrolls AEL eligible participants who:

41
42 (i) do not have a high school diploma or recognized equivalency;

43
44 (ii) qualify for federal student financial aid eligibility under the federal
45 Ability-to-Benefit provisions enacted in §484(d) of the Higher
46 Education Act of 1965; and

1
2 (iii) demonstrate on an assessment instrument that the participant can
3 pass college-level courses with some support;

4
5 (2) include measures that require:

6
7 (A) at least 25 percent of all participants served in the program year to be
8 enrolled in a high school equivalency or postsecondary ability-to-benefit
9 program; and

10
11 (B) at least 70 percent of participants who were in a high school equivalency
12 or postsecondary ability-to-benefit program during the program year and
13 exited during the program year to achieve either a high school
14 equivalency or a recognized postsecondary credential; and

15
16 (3) be approved by the Commission each program year for milestones toward
17 meeting high school equivalency program or postsecondary ability-to-benefit
18 program enrollment and achievement as outlined in paragraph (2) of this
19 subsection.

20
21 **SUBCHAPTER F. INTERAGENCY MATTERS**

22
23 **§800.206. Interagency Contract with the Texas Education Agency.**

24
25 The Texas Workforce Commission adopts by reference the terms of an interagency
26 contract entered into with the Texas Education Agency, as required by Texas Education
27 Code, §48.302, relating to the transfer of funds to implement a high school equivalency
28 subsidy program set out in Chapter 805, Subchapter E, §§805.71 - 805.73 of this title
29 (relating to High School Equivalency Subsidy Program).