

TEXAS WORKFORCE COMMISSION
Workforce Development Letter

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| ID/No: | WD 28-20, Change 1 |
| Date: | December 14, 2023 |
| Keyword: | Child Care; SNAP E&T; TANF/Choices; WIOA |
| Effective: | Immediately |

To: Local Workforce Development Board Executive Directors
Commission Executive Offices
Integrated Service Area Managers

Courtney Arbour

From: Courtney Arbour, Director, Workforce Development Division

**Subject: Deobligation and Reallocation of Commission-Allocated Funds—
Update**

PURPOSE:

The purpose of this WD Letter is to provide Local Workforce Development Boards (Boards) with updated guidance on the deobligation and reallocation of funds allocated by the Texas Workforce Commission's (TWC) three-member Commission (Commission) to local workforce development areas (workforce areas).

RESCISSIONS:

WD Letter 28-20

BACKGROUND:

TWC Chapter 800 General Administration rules §§800.71–800.77 set forth provisions for the deobligation and reallocation of Commission-allocated funds. Additionally, the rules provide TWC with flexibility in its review of underlying factors or causes for a Board's under-expenditure of Commission-allocated funds.

The rules state the following:

- The Commission allocates funds to workforce areas.
- The scope of TWC's evaluation of factors that impact expenditure levels includes Board performance on contracted measures, specifically service delivery factors that contribute to performance and use of funds within a workforce area.
- Boards are required to notify the Board Chair when requesting a voluntary deobligation of funds.

- TWC’s review of requests for reallocated funds is based on an evaluation of a Board’s ability to use funds, the performance factors, and a demonstrated need in the workforce area.
- TWC’s deobligation and reallocation of funds must conform to applicable federal program requirements.

TWC submitted to the US Department of Labor (DOL) a request for a waiver of the reallocation provisions of §128(c)(3) and §133(c)(3) of the Workforce Innovation and Opportunity Act (WIOA). The waiver allows TWC to develop different criteria from what is required by statute for the reallocation of recaptured funds among workforce areas. On February 2, 2023, DOL approved the waiver request for Program Years 2022 and 2023 (which expires June 30, 2024).

PROCEDURES:

No Local Flexibility (NLF): This rating indicates that Boards must comply with the federal and state laws, rules, policies, and required procedures set forth in this WD Letter and have no local flexibility in determining whether and/or how to comply. All information with an NLF rating is indicated by “must.”

Local Flexibility (LF): This rating indicates that Boards have local flexibility in determining whether and/or how to implement guidance or recommended practices set forth in this WD Letter. All information with an LF rating is indicated by “may” or “recommend.”

NLF: Boards must ensure that appropriate staff is aware of and adheres to the requirements, procedures, and time frames related to the deobligation and reallocation of Commission-allocated funds to workforce areas, as set forth in Chapter 800 and in this WD Letter.

NLF: Boards must be aware that TWC holds Boards accountable for fully using Commission-allocated funds to address the needs of job seekers and employers within the workforce area.

WIOA Deobligation

NLF: Boards must be aware that under federal requirements, WIOA formula funds are subject to an 80 percent obligation requirement by the end of the first program year.

NLF: Additionally, Boards must be aware that TWC conducts an end-of-year review of WIOA formula funds. Funds in excess of 20 percent of the allocation for the prior program year, less any amount reserved for administration (up to 10 percent), for each category of WIOA formula-allocated funds that are unobligated are subject to deobligation.

NLF: Furthermore, Boards must be aware that prior-year WIOA formula funds are subject to deobligation at any time during a subsequent program year. TWC will

continue to actively oversee WIOA service delivery, including evaluations of expenditures and performance, and will provide Boards with technical assistance.

NLF: Boards also must be aware that expenditure reviews will be conducted monthly.

Other Program Deobligation

NLF: Boards must be aware that Child Care Services (CCS), Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T), and Temporary Assistance for Needy Families (TANF) funds are subject to a 90 percent expenditure requirement.

NLF: Boards also must be aware that TWC conducts midyear reviews of expenditures in the fifth through eighth program months (February through May) for CCS, SNAP E&T, and TANF. TWC bases a potential deobligation only on a Board's failure to achieve the expenditure of an amount corresponding to 90 percent or more of the relative proportion of the program year.

For example, at the end of the sixth month of the program year, 50 percent of the program year is completed, and 90 percent of 50 percent equals 45 percent, which is the lowest expenditure level to be achieved in order to avoid a potential deobligation.

Deobligation from TWC

NLF: Boards must be aware that:

- CCS, SNAP E&T, and TANF funds are available for deobligation by TWC beginning in months five through eight of the program year; and
- WIOA funds are available for deobligation by TWC beginning any time following the end of the first program year.

LF: Before TWC considers a potential deobligation, Boards may provide information to justify their current and projected expenditure levels, pertinent performance data, and service levels.

NLF: When TWC notifies the Board of the potential deobligation amount, the Board must provide a service delivery plan that includes detailed information on the actions that the Board will take to address its deficiencies, such as:

- the expansion of services proportionate to the available resources (whether the Board plans to increase services and activities for customers and/or increase the number of customers served, including the number of customers in training);
- projected service levels and related performance (projected increases in the number of customers receiving services, the projected increases in services, and associated performance outcomes);
- projected expenditures for unliquidated obligations (description of services or property that has been reported to TWC as obligations and the projected time frames for expenditure); and

- any other factors that a Board would like TWC to consider.

Grant Award Amendments within 60 Days of Review Period

NLF: Boards must be aware that TWC will not deobligate funds if a grant award amendment has been executed with the Board for a supplemental allocation or reallocation of funds (in the same program category of funding) during the 60 days before the potential deobligation period.

Voluntary Deobligation

LF: Boards may request a voluntary deobligation of funds when current allocations exceed the needs of their service delivery strategies.

NLF: To request a voluntary deobligation of funds, Boards must submit a written request to the Commission and a copy to the Board Chair.

Reallocation of Funds

NLF: Boards must be aware that:

- the Commission may reallocate available balances of Commission-allocated funds to eligible workforce areas; and
- all funds that the Commission has deobligated must be reallocated in the same program year.

NLF: Boards must submit a written request to their assigned grant manager in order to request additional funds that the Commission has made available for reallocation.

NLF: Boards must be aware that TWC will develop reallocation recommendations for WIOA, CCS, SNAP E&T, and TANF formula funds based on the:

- amounts available for redistribution;
- amounts specified in the Board's written request for additional funds;
- demonstrated need for and ability to use additional funds to serve low-income individuals, public assistance recipients, dislocated workers, and unemployment insurance claimants;
- demonstrated capacity of the Board to effectively expend funds to address the need for services in the workforce area; and
- Board's performance during the current and previous program year.

NLF: Additionally, for WIOA formula funds, Boards must be aware that TWC will consider the Board's established plan for working with at least one of the governor's industry clusters, as specified in the Board's local plan, as a factor for recommendation of the reallocation of funds.

NLF: Boards must be aware that to be eligible to receive reallocated WIOA formula funds, Boards must have obligated at least 80 percent of the previous program year's allocation, less any amount reserved for administrative funds (up to 10 percent). A workforce area's eligibility to receive a reallocation will be

determined separately for each funding stream (for example, adult, dislocated worker, and youth).

INQUIRIES:

Send inquiries regarding this WD Letter to wfpolicy.clarifications@twc.texas.gov.

ATTACHMENTS:

Attachment 1: WD Letter 28-20 with Revisions Shown in Track Changes

REFERENCES:

Title 2, Code of Federal Regulations, §200.1

Title 20, Code of Federal Regulations, §683.140

Texas Labor Code §301.0015 and §302.002

Texas Workforce Commission Chapter 800 General Administration Rules