

CHAPTER 800. GENERAL ADMINISTRATION

PROPOSED RULES TO BE PUBLISHED IN THE *TEXAS REGISTER*. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE OFFICE OF SECRETARY OF STATE.

ON **NOVEMBER 7, 2023**, THE TEXAS WORKFORCE COMMISSION PROPOSED THE RULES BELOW WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated Publication Date of the Proposal in the *Texas Register*: **November 24, 2023**

Estimated End of Comment Period: **December 25, 2023**

The Texas Workforce Commission (TWC) proposes amendments to the following sections of Chapter 800, relating to General Administration:

Subchapter B. Allocations, §800.68

Subchapter L. Workforce Diploma Pilot Program, §800.501

TWC proposes the following new section to Chapter 800, relating to General Administration:

Subchapter B. Allocations, §800.69

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The proposed amendments to Chapter 800 create new §800.69, Integrated English Literacy and Civics Education Program, which outlines how funds appropriated to the state under Workforce Innovation and Opportunity Act (WIOA), §243, Integrated English Literacy and Civics Education (IELCE), will be allocated through a statewide competition.

The proposed amendments incorporate into rule the requirements of House Bill (HB) 1602 and HB 2575, as passed by the 88th Texas Legislature, Regular Session (2023).

HB 1602 requires TWC to establish rules to develop performance criteria for the prioritization for the continuous award of grant funds. As such, TWC is proposing revisions to Subchapter B. Allocations, §800.68(a).

HB 2575 requires revisions to the definition of "qualified providers" in Subchapter L, Workforce Diploma Pilot Program, §800.501(12).

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

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

SUBCHAPTER B. ALLOCATIONS

TWC proposes the following amendments to Subchapter B:

§800.68. Adult Education and Literacy

Section 800.68 outlines how the state allocates General Revenue funds as well as WIOA, Title II, Temporary Assistance for Needy Families (TANF) funds to support the Adult Education and Literacy (AEL) program in Texas. Added to §800.68(a) are the HB 1602 requirements relating to priority of awarding grant funds based on performance criteria comparable to Texas Labor Code §315.007. TWC also proposes removing §800.68(d) and placing it in new section, §800.69.

§800.69. Integrated English Literacy and Civics Education Program

New §800.69 sets forth the state's allocation methodology that allows eligible applicants to demonstrate a need for funds to provide IELCE program activities to eligible adult learners across the state.

SUBCHAPTER L. WORKFORCE DIPLOMA PILOT PROGRAM

TWC proposes the following amendments to Subchapter L:

§800.501. Definitions

Section 800.501 is amended to update the definition of "qualified provider" to align with Texas Labor Code §317.004(2)(B), as amended by HB 2575.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are estimated losses in revenue to local governments as a result of enforcing or administering the rules. The US Department of Education's Office of Career, Technical, and Adult Education (OCTAE) has determined that TWC's AEL program can no longer require applicants to accept both WIOA §231 and §243 funds. Instead, applicants must be allowed to choose whether to apply for one or both funds. In response to OCTAE's directive, TWC will offer AEL and Integrated English Literacy and Civics Education (IELCE) funds through separate competitive statewide applications. Separating the application processes could cause funding that was previously allocated to providers based upon the counties served in each local workforce development area (workforce area) to distribute differently. Specifically, IELCE funds will now be awarded through statewide competition and based on demonstrated need, while regular AEL funds will still be allocated proportionally to the state's 28 workforce areas based on eligible populations by county. IELCE funding will still be available statewide, but IELCE services may not be locally available in all 254 Texas counties due to the changes in the procurement process, which could mean a loss of funds in some areas if no providers apply for funding. In particular,

some rural communities may not have a demonstrated need for the funds because of their small populations, which may cause a disadvantage for rural applicants.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules. Because IELCE funds now will be awarded through statewide competition instead of through proportional allocation to all workforce areas, smaller grant recipients in rural areas may not find it financially feasible to compete for grants.

Based on the analyses required by Texas Government Code, §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code, §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Analysis for the proposed rulemaking action under Texas Government Code §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to establish rules as required by HB 1602, amend existing rules as necessitated by HB 2575, and implement changes related to federal statutory requirements regarding the allocation of WIOA Title II funds.

The proposed rulemaking action will not create any additional burden on private real property or affect private real property in a manner that would require compensation to private real property owners under the US Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the rules will be in effect, they:

- will not create or eliminate a government program;
- will not require the creation or elimination of employee positions;
- will not require an increase or decrease in future legislative appropriations to TWC;

- will not require an increase or decrease in fees paid to TWC;
- will not create a new regulation;
- will not expand, limit, or eliminate an existing regulation;
- will not change the number of individuals subject to the rules; and
- will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the rules will not have an adverse economic impact on small businesses or rural communities, as the proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market Information, has determined that there is not a significant negative impact upon employment conditions in the state as a result of the rules.

Courtney Arbour, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to maximize the use of funds while ensuring equitable access to entities that have demonstrated program effectiveness.

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

PART IV. COORDINATION ACTIVITIES

The proposed amendments align TWC rules with federal statutes and regulations regarding procurement of WIOA Title II funds, and implement HB 1672 and HB 2575, as passed by the 88th Texas Legislature, Regular Session (2023). AEL program staff have informed AEL grant recipients of the proposed rulemaking through their regular biweekly conference calls. The public will have an opportunity to comment on these proposed rules for 30 days upon publication in the *Texas Register*.

PART V. PUBLIC COMMENTS

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov and must be received no later than December 25, 2023.

PART VI. STATUTORY AUTHORITY

The rules are proposed under the following statutory authority:

- Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities; and
- Texas Labor Code Chapter 317, enacted by Senate Bill 1055, 86th Texas Legislature, Regular Session (2019), which required TWC to establish and administer the Workforce Diploma Pilot Program.

Additionally, HB 1602, 88th Texas Legislature, Regular Session (2023), added Texas Labor Code §315.002(b-1), which requires TWC to establish rules developing annual performance criteria for prioritizing the awarding of grant funds.

The proposed rules implement Title 4, Texas Labor Code, particularly Chapter 315.

CHAPTER 800. GENERAL ADMINISTRATION

SUBCHAPTER B. ALLOCATIONS

§800.68. Adult Education and Literacy.

- (a) AEL funds available to the Commission to provide services under the federal Adult Education and Family Literacy Act (AEFLA), WIOA Title II, together with associated state general revenue matching funds and federal TANF funds--together with any state general revenue funds appropriated as TANF maintenance-of-effort--will be used by the Commission, as set forth in subsections (b) - ~~(d)~~(e) of this section. Prior to any grant recipient receiving notice of an award, the Commission shall review and approve the award of grant funds to be issued under this program. The Commission shall give priority in awarding funds to entities that consistently satisfy annual performance requirements comparable to subsection (e) of this section.
- (b) At least 82.5 percent of the federal funds constituting the total state award of AEFLA state grants--including amounts allotted to the eligible agency having a state plan, as provided by AEFLA §211(c)~~and amounts provided to the eligible agency under §243 for English Literacy/Civics (EL/Civics)~~--will be allocated by the Commission to the workforce areas. From the amount allotted to the eligible agency having a state plan, as provided by AEFLA §211(c), the Commission will allocate amounts to the workforce areas according to the established federal formula, as follows:
- (1) 100 percent will be based on:
 - (A) the relative proportion of individuals residing within each workforce area who are at least 18 years of age, do not have a secondary school diploma or its recognized equivalent, and are not enrolled in secondary school, during the most recent period for which statistics are available;
 - (B) an equal base amount; and
 - (C) the application of a hold-harmless/stop-gain procedure.
 - (2) No more than 5 percent of the funds expended as part of this workforce area allocation shall be used for administrative costs, as defined by AEFLA, provided, however, that the Special Rule outlined in AEFLA §233(b) shall apply with effective justification, as appropriate.
 - (3) No more than 10 percent of this allocation shall be available for expenditure within each workforce area on the basis of the achievement of performance benchmarks, as set forth in subsection ~~(e)~~(f) of this section.

- (c) At least 80 percent of the state general revenue matching funds associated with the allotment of federal funds to the eligible agency having a state plan, as provided by AEFLA §211(c), will be allocated by the Commission to the workforce areas according to the established federal formula, as follows:
- (1) 100 percent will be based on:
 - (A) the relative proportion of individuals residing within each workforce area who are at least 18 years of age, do not have a secondary school diploma or its recognized equivalent, and are not enrolled in secondary school, during the most recent period for which statistics are available;
 - (B) an equal base amount; and
 - (C) the application of a hold-harmless/stop-gain procedure.
 - (2) No more than 15 percent of the funds expended as part of this workforce area allocation shall be used for administrative costs, as defined by Commission policy.
 - (3) No more than 10 percent of this allocation shall be available for expenditure within each workforce area on the basis of the achievement of performance benchmarks, as set forth in subsection ~~(e)~~(f) of this section.

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

~~(1) The relative proportion based on:~~

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

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

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

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

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

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

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

(1) 100 percent will be based on:

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

(B) an equal base amount; and

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

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

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

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

~~(f)~~^(g) Performance accountability benchmarks shall:

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

(A) results in a recognized postsecondary credential; and

(B) enrolls AEL eligible participants who:

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

- (ii) qualify for federal student financial aid eligibility under the federal Ability-to-Benefit provisions enacted in §484(d) of the Higher Education Act of 1965; and
 - (iii) demonstrate on an assessment instrument that the participant can pass college-level courses with some support;
- (2) include measures that require:
 - (A) at least 25 percent of all participants served in the program year to be enrolled in a high school equivalency or postsecondary ability-to-benefit program; and
 - (B) at least 70 percent of participants who were in a high school equivalency or postsecondary ability-to-benefit program during the program year and exited during the program year to achieve either a high school equivalency or a recognized postsecondary credential; and
- (3) be approved by the Commission each program year for milestones toward meeting high school equivalency program or postsecondary ability-to-benefit program enrollment and achievement as outlined in paragraph (2) of this subsection.

§800.69. Integrated English Literacy and Civics Education Program.

- (a) At least 82.5 percent of the AEFLA §243 Integrated English Literacy and Civics Education federal award allocated to the state must be awarded to entities with demonstrated effectiveness as determined through a statewide competitive procurement, as follows:
 - (1) 100 percent of the award will be based on the demonstrated need cited and supported with data by the eligible applicant as part of a statewide procurement;
 - (2) No more than 5 percent of the funds expended as part of the total allocation shall be used for administrative costs, as defined by AEFLA, provided, however, that the Special Rule outlined in AEFLA §233(b) shall apply with effective justification, as appropriate;
 - (3) No more than 10 percent of this allocation shall be available for expenditure on the basis of the achievement of performance benchmarks, as set forth in §800.68(e); and
 - (4) The application of a hold-harmless/stop gain procedure.

(b) The Commission shall give priority in awarding funds to entities that consistently satisfy annual performance requirements comparable to §800.68(f) of this subchapter.

SUBCHAPTER L. WORKFORCE DIPLOMA PILOT PROGRAM

§800.501. Definitions.

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

- (1) Academic resiliency--A student's ability to persist and to academically succeed despite adversity.
- (2) Academic skill intake assessment--A formal and/or informal assessment used at intake to gather information on a student's current knowledge and skills in specific academic areas (for example, literacy and numeracy). That information is then used to determine the student's appropriate instructional level as well as accommodations and/or remediation that the student needs.
- (3) Career Pathway--A combination of rigorous and high-quality education, training, and other services that:
 - (A) aligns with the skill needs of industries in the economy of the state or regional economy involved;
 - (B) prepares an individual to be successful in any of a full range of secondary or postsecondary education options;
 - (C) includes counseling to support an individual in achieving the individual's education and career goals;
 - (D) includes, as appropriate, education offered concurrently with, and in the same context as, workforce preparation activities and training for a specific occupation or occupational cluster;
 - (E) organizes education, training, and other services to meet the particular needs of an individual in a manner that accelerates the educational and career advancement of the individual to the extent practicable;
 - (F) enables an individual to attain a secondary school diploma or its recognized equivalent, and at least one recognized postsecondary credential; and
 - (G) helps an individual enter or advance within a specific occupation or occupational cluster (29 USC §3102, Definitions).

- (4) Eligible participant--An individual who is over the age of compulsory school attendance, as prescribed by Texas Education Code, §25.085, and as required by the Agency, must:
 - (A) be a Texas resident;
 - (B) lack a high school diploma;
 - (C) be authorized to work in the United States; and
 - (D) be able to work immediately upon graduation from the program.
- (5) Employability skills certification program--Refers to a certification in general skills that are necessary for success in the labor market at all employment levels and in all industry sectors. Employability skills include problem-solving, collaboration, organization, and adaptability.
- (6) Half credit--The standard award of credit given for a course that lasts one semester, and which is based on the Carnegie Unit. When determining credits, qualified providers should consider instructional time plus the amount of time that the student would take to complete the coursework in a high school semester or academic year. In traditional education models, a student typically attends a class for 55 to 60 minutes a day for four or five days a week in addition to studying independently.
- (7) High school diploma--A credential awarded by an entity, based on completion of all state graduation requirements as outlined in Texas Education Code, §28.025 and §39.023 and 19 TAC Chapter 74 (relating to Curriculum Requirements) and Chapter 101 (relating to Assessment).
- (8) Industry-recognized credential--A state-approved credential verifying an individual's qualifications and competence and is issued by a third party with the relevant authority to issue such credentials (US Department of Labor, 2010). Industry-recognized credentials offered by qualified providers must align with the Agency's mission to target high-growth, high-demand, and emerging occupations that are crucial to the state and local workforce economies, and must reflect the target occupations for the workforce areas in which services will be provided. Qualified providers may also reference the list of industry-based certifications for public school accountability published by the Texas Education Agency.
- (9) Learning Plan Development--The process by which an individualized learning plan is developed after student intake; it is maintained through coaching and mentoring.

- (10) One credit--The standard award credit given for a course that lasts a full academic year, and which is based on the Carnegie Unit. When determining credits, qualified providers should consider instructional time plus the amount of time that the student would take to complete the coursework in a high school semester or academic year. In traditional education models, a student typically attends a class for 55 to 60 minutes a day for four or five days a week, in addition to studying independently.
- (11) Program--Refers to the Workforce Diploma Pilot Program, set forth in Texas Labor Code, Chapter 317.
- (12) Qualified provider--A provider that may participate in the Program and receive reimbursement and that:
 - (A) is a public, nonprofit, or private entity that is:
 - (i) authorized under the Texas Education Code or other state law to grant a high school diploma; or
 - (ii) accredited by a regional accrediting body, as established by the US Secretary of Education, pursuant to 20 USCS §1099b, Recognition of Accrediting Agency or Association [and working in partnership with an entity described by clause \(i\) of this subparagraph](#);
 - (B) has at least two years of experience providing dropout reengagement services to adult students, including recruitment, learning plan development, and proactive coaching and mentoring, leading to the obtainment of a high school diploma;
 - (C) is equipped to:
 - (i) provide:
 - (I) academic skill intake assessment and transcript evaluations;
 - (II) remediation coursework in literacy and numeracy;
 - (III) a research-validated academic resiliency assessment and intervention;
 - (IV) employability skills development aligned to employer needs;
 - (V) career pathways coursework;
 - (VI) preparation for the attainment of industry-recognized credentials; and

- (VII) career placement services; and
 - (ii) develop a learning plan that integrates academic requirements and career goals; and
 - (D) offers a course catalog that includes all courses necessary to meet high school graduation requirements in Texas, as authorized under 19 TAC Chapter 74, Subchapter B (relating to Graduation Requirements).
- (13) Regional accrediting body--Must meet the criteria established by the US Secretary of Education pursuant to 20 USCS §1099b, Recognition of Accrediting Agency or Association, and appear on the US Secretary of Education's list of federally recognized accrediting agencies in the *Federal Register*, as stated in 34 CFR §602.2. A copy of the list may be obtained from the US Department of Education.