

Chapter 800. GENERAL ADMINISTRATION

The Texas Workforce Commission (Commission) proposes an amendment to Subchapter A, General Provisions, §800.2, Definitions; the repeal of §§800.51, 800.52, 800.58, and 800.61 and new §§800.51, 800.52, 800.58, 800.61, 800.71 - 800.75 for Subchapter B, Allocations and Funding; and the repeal of Subchapter C, Reallocation of Funds, §§800.81 - 800.86.

The purposes of the changes are to reorganize the allocation and reallocation rules; to streamline the rules by removing the Funds Utilization and Service Level Report and Plan requirements; to focus on target expenditure levels, performance data; and to set forth methods of examining expenditure levels and performance data as they relate to the provision of workforce services and training.

The Commission's intent in removing the Funds Utilization and Service Level Report and Plan is to respond to the needs and requests of local workforce development boards (Boards). The Commission strives for a method of ensuring that funds are fully utilized in the areas that are allocated those funds based on the federal formulas or as otherwise permitted by state law to be formula allocated using a need-based formula. The Funds Utilization and Service Level Report and Plan were initially developed to permit Boards to plan service delivery and related expenditures more carefully, according to their approved plan, yet provide a mechanism for the Commission to evaluate such performance, deobligate and quickly redistribute unexpended funds to areas of the state demonstrating the ability to provide services more efficiently and effectively, using funds in a timely manner. In implementing the Funds Utilization and Service Level Reports and Plans, it is apparent that the plans and reports created additional administrative burden and hindered flexibility. The Commission intends to remove any reporting or planning requirements that are not necessary. The Commission also seeks to simplify processes, yet maintain a predictable schedule for the redistribution of allocated monies.

For those reasons, the Commission invites the Boards to comment on the elimination of the Funds Utilization and Service Level Report and Plan requirements and also requests additional comments on the deobligation and reallocation criteria set forth in this proposal. Suggestions of alternate methods of ensuring full utilization of funds are also welcome.

Section 800.2, changes the program year for Food Stamps Employment and Training from September 1 - August 31 to October 1 - September 30.

Section 800.58(f)(2) removes the requirement that Boards expend at least 4% of the Child Care and Development Funds for quality improvement activities, in order to give Boards the option of placing some of the 4% of funds into direct child care.

Section 800.61(c) changes the provisions relating to state general revenue funds for Welfare-to-Work to allow for more flexibility in the use of those funds. Section 800.61(e) is removed.

The rules numbers are consolidated into one subchapter for Allocation, Deobligation and Reallocation by renumbering §§800.81 - 800.86 as §§800.71 - 800.75.

In Section 800.81(b) the intent provision is moved to §800.51 to locate the provision so it is apparent that it applies to allocation, deobligation and reallocation.

Section 800.81 is renumbered as §800.71 and in subsection (b) the language is removed that excepts Welfare-to-Work and Workforce Investment Act (WIA) formula allocated funds, including Adult, Youth and Dislocated Worker funds, from the intent section; it also streamlines the reference to WIA throughout the applicable rules by referencing WIA Adult, Youth and Dislocated Workers as "WIA formula allocated funds."

Section 800.81(c) and throughout shortens the references from WIA Adult, WIA Dislocated Worker and WIA Youth to "WIA formula allocated funds" and removes unnecessary provisions relating to subsection (c)(2) exceptions to the scope of the rules.

Section 800.82 repeals the rule and merges the definitions of expenditures, monthly expenditure report, and obligation into §800.52 and deletes the remaining definitions of Funds Utilization and Service Level Plan, Program year, and service level report.

Section 800.83 is renumbered as §800.72 and the planning requirement related to the Funds Utilization and Service Level Reports is removed.

The provision regarding necessary revisions to the monthly expenditure report is eliminated throughout.

Section 800.84 is renumbered as §800.73 and a provision is added encouraging Boards to meet targeted expenditure levels to achieve services. Subsection (b), the provision relating to carryover funds for child care, is eliminated and replaced with the provision that allows the Commission to consider obligated funds in reviewing the Boards' compliance with target expenditure levels as well as other factors necessary to evaluate performance of the Board.

Section 800.85 is renumbered as §800.74 and changed from required expenditure levels to target expenditure levels and allow the consideration of a Board's justification of current and projected service levels and related performance data in determining an amount of funding to deobligate.

Section 800.86 is renumbered as §800.75 and subsection (b)(1) is changed from a requirement to utilize specific criteria to allowing the Commission to consider factors including targeted expenditure levels and whether a Board is within 90% of contracted performance measures.

For purposes of this preamble, the term "Agency" refers to the daily operations of the Texas Workforce Commission under the direction of the executive director, and the term "Commission" refers to the three-member body of governance composed of Governor-appointed members.

Background. The Commission is charged with ensuring Board and subrecipient of the Agency accountability. Boards are charged with the oversight and management of the services and activities of the One-Stop Service Delivery Network. Specifically, Board and Commission goals reflect WIA goals: streamlining services; empowering individuals; universal access; increased accountability; strong role for Boards and the private sector; and state and local flexibility. The four principles of Texas' vision are: limited and efficient state government; local control; personal responsibility; and support for strong families.

Texas Government Code Chapter 2308, Texas Labor Code Title 4 and WIA have imposed on Boards a number of duties and responsibilities for the administration of Commission-funded activities, including maintaining adequate fiscal systems, complying with the uniform rules for administration of grants and agreements, meeting the contract performance measures, and complying with all applicable state and federal statutes and regulations.

The proposed rules emphasize the partnership between the Commission and Boards in assuring compliance with federal and state requirements through performance reviews, technical assistance, and contract oversight and monitoring.

Randy Townsend, Director of Finance, 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 reductions in costs to the state and to local governments as a result of enforcing or administering the rules;

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules;

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; and

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

Mr. Townsend has also determined that there is no anticipated adverse impact on small businesses as a result of enforcing or administering the rules because small businesses are not regulated or required to do anything by the rules.

James Barnes, Director of Labor Market Information, has determined that there is no significant negative impact upon employment conditions in this state as a result of the proposed rules.

Barbara Cigainero, Director of Workforce and Development, 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 rules will be to streamline the definitions, allocation, deobligation and reallocation provisions to assist the Boards in the management and oversight of workforce services and activities. The purpose is also to remove the funds utilization and service level reports and plans to respond to the needs and requests of Boards.

Comments on the proposal may be submitted to John Moore, Texas Workforce Commission Building, 101 East 15th Street, Room 608, Austin, Texas 78778, (512) 463-3041. Comments may also be submitted via fax to (512) 463-1426 or e-mailed to: John.Moore@twc.state.tx.us. Comments must be received by the Agency within 30 days from the date of the publication in the *Texas Register*.

For information about the Commission please visit our web page at www.texasworkforce.org.

Subchapter A. GENERAL PROVISIONS

40 TAC §800.2

The amendment is proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The amendment affect Texas Labor Code, Chapter 302, and Texas Human Resources Code, Chapters 31 and 44.

§800.2. Definitions

The following words and terms, when used in this Part 20, relating to the Texas Workforce Commission, shall have the following meanings, unless the context clearly indicates otherwise.

(1)-(16) (No change.)

(17) WIA--Workforce Investment Act, Public Law 105-220, 29 U.S.C.A. §2801 *et seq.* References to WIA include references to WIA formula allocated funds unless specifically stated otherwise.

(18) WIA formula allocated funds or services and activities--Funds or services and activities related to WIA Adult, Dislocated Worker and Youth provisions.

(19) [~~(48)~~] Local Workforce Development Area--Workforce development areas designated by the Governor pursuant to Texas Government Code §2308.252 and functioning as a Local Workforce Investment Area, as provided for under the Workforce Investment Act §116 and §189(i)(2) (29 U.S.C.A. §2831 and §2939).

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

Filed with the Office of the Secretary of State, on June 15, 2001.

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John Moore

Assistant General Counsel

Texas Workforce Commission

Earliest possible date of adoption: July 29, 2001

For further information, please call: (512) 463-2573

Subchapter B. ALLOCATIONS AND FUNDING

40 TAC §§800.51, 800.52, 800.58, 800.61

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Texas Labor Code, Chapter 302, and Texas Human Resources Code, Chapters 31 and 44.

§800.51.Scope and Purpose.

§800.52.Definitions.

§800.58.Child Care.

§800.61.Welfare to Work.

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

Filed with the Office of the Secretary of State, on June 15, 2001.

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Assistant General Counsel

Texas Workforce Commission

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For further information, please call: (512) 463-2573

40 TAC §§800.51, 800.52, 800.58, 800.61, 800.71 - 800.75

The new rules are proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new rules affect Texas Labor Code, Chapter 302, and Texas Human Resources Code, Chapters 31 and 44.

§800.51.Scope and Purpose.

(a) The purpose of this rule is to interpret Texas Labor Code, §302.062, as enacted in House Bill 1863, 74th Legislature (1995), relating to the allocation of available funds for workforce training and services from the Texas Workforce Commission to workforce areas. It is the intent of the Commission to allocate funds to workforce areas for the purpose of meeting or exceeding statewide performance measures as set forth in the state General Appropriations Act and consistent with the authority reflected in Texas Labor Code, §302.004. This subchapter sets forth the level required by law to be allocated to workforce areas. The Commission is committed, whenever

possible, to allocating an amount of funds available for workforce training and services greater than the minimum level set by law.

(b) Funds allocated or reallocated under this subchapter will only be made available to the local boards under the terms of a properly executed contract between a certified local board with an approved plan and the Commission.

(c) The allocation formulas described in this subchapter will only be applicable for allocations and executed contracts for a complete state fiscal year. For contract periods of less than a complete state fiscal year, the allocated amounts will be negotiated between the Commission and the Board, based upon the remaining months of the state fiscal year.

(d) Subsections (a) - (c) of this section shall apply to all sections contained in this subchapter unless a section specifically states otherwise.

(e) Funds available to the Commission that are not otherwise allocated or reallocated under this subchapter, may be used by the Commission for purposes authorized by state and federal laws and regulations.

(f) Notwithstanding any other provision of the rules contained in this part, the level of funding allocated to a workforce area may be modified or reallocated by the Commission for one or more of the following reasons:

(1) to ensure full utilization of the funding;

(2) to ensure compliance with State and federal requirements applicable to the State;

(3) to meet the State's federal participation rates;

(4) to respond to caseload changes; or

(5) to respond to unforeseen demographic or economic changes.

§800.52. Definitions.

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

(1) All-family participation rate--The percentage of all families receiving TANF benefits that a state must engage in an approved work activity for a specified number of hours per week as provided by the Personal Responsibility and Work Opportunities Reconciliation Act of 1996, §407, as amended.

(2) Expenditures--Costs incurred for goods and services that cause decreases in net financial resources.

(3) Monthly expenditure report--A report submitted by a Board that contains information regarding services for each category of funding allocated by the Commission, and in which the Board lists expenditures and obligations by category of funding.

(4) Obligation--A debt established by a legally binding contract, letter of agreement, sub-grant award, or purchase order, which has been executed prior to the end of a program year, and which will be performed within the program year or within 90 calendar days after the end of a program year. Any obligation periods extending beyond 90 days after the program year shall be prorated using the straight-line method or other acceptable proration method that accurately matches benefits received with dollars included as obligations. Obligations include Individual Training Accounts as described in the Workforce Investment Act.

(5) Two-parent family participation rate--The percentage of two-parent families receiving cash assistance that a state must engage in an approved work activity for a specified number of hours per week as determined by the state and permitted by the by the Personal Responsibility and Work Opportunities Reconciliation Act of 1996, §407, as amended.

§800.58. Child Care.

(a) Funds available to the Commission for child care services will be allocated to the workforce areas using need-based formulas, as set forth in this section.

(b) Child Care and Development Fund (CCDF) Mandatory Funds authorized under the Social Security Act §418(a)(1), as amended, together with state general revenue Maintenance of Effort (MOE) Funds, Social Services Block Grant funds, Welfare-to-Work funds reserved by the Governor, TANF funds, and other funds designated by the Commission for child care (excluding any amounts withheld for state-level responsibilities) will be allocated on the following basis:

(1) 50% will be based on the relative proportion of the total number of children under the age of five years old residing within the workforce area to the statewide total number of children under the age of five years old, and

(2) 50% will be based on the relative proportion of the total number of people residing within the workforce area whose income does not exceed 100% of the poverty level to the statewide total number of people whose income does not exceed 100% of the poverty level.

(c) Child Care and Development Fund (CCDF) Matching Funds authorized under the Social Security Act §418(a)(2), as amended, together with state general revenue matching funds and estimated appropriated receipts of donated funds, will be allocated according to the relative proportion of children under the age of 13 years old residing within the workforce area to the statewide total number of children under the age of 13 years old.

(d) Child Care and Development Fund (CCDF) Discretionary Funds authorized under the Child Care and Development Block Grant Act of 1990 §658B, as amended, will be allocated according to the relative proportion of the total number of children under the age of 13 years old in families whose income does not exceed 150% of the poverty level residing within the workforce area to the statewide total number of children under the age of 13 years old in families whose income does not exceed 150% of the poverty level.

(e) For Food Stamp Employment and Training child care, funds will be allocated among workforce areas on the basis of the relative proportion of the total number of children aged 6-12 years in households of mandatory food stamp work registrants residing within the workforce area to the statewide total number of children aged 6-12 years in households of mandatory food stamp work registrants.

(f) The following provisions apply to the funds allocated in subsections (b) - (e) of this section:

(1) Sufficient funds must be used for direct child care services to ensure Commission-approved performance targets are met.

(2) Transitional clients who are eligible for child care for their children and Choices clients who are eligible for child care for their children shall be served on a priority basis to enable parents to participate in work, education, or training activities.

(3) No more than 5% of the total expenditure of funds may be used for administrative expenditures as defined in federal regulations contained in 45 Code of Federal Regulations §98.52, as may be amended unless the total expenditures for a workforce area are less than \$5,000,000. If a workforce area has total expenditures of less than \$5,000,000, then no more than \$250,000 may be used for administrative expenditures.

(4) Each Board shall set the amount of the total expenditure of funds to be used for quality activities consistent with federal and state statutes and regulations.

(5) The Board shall comply with any additional requirements adopted by the Commission or contained in the Board contract.

§800.61. Welfare-to-Work.

(a) Welfare-to-Work funds available to the Commission for the Welfare-to-Work allowable activities as referenced in Chapter 839 of this title will be allocated by the Commission to the workforce areas according to the formula set forth in subsection (b) of this section.

(b) At least 85% of the federal funds available to the Commission for the Welfare-to-Work allowable activities as referenced in Chapter 839 of this Title will be allocated by the Commission to the workforce areas according to the formula, as follows:

(1) 50% of these federal funds will be allocated based on the relative number by which the population in the area below poverty exceeds 7.5% of the total population (referred to as the poverty factor), and

(2) 50% of these federal funds will be allocated based on the relative number of adults residing in the areas receiving assistance under TANF or the predecessor statute for at least 30 months (referred to as the long-term TANF factor.)

(c) General revenue funds appropriated or otherwise made available to the Commission for Welfare-to-Work may be distributed to workforce areas based upon a Board's demonstrated effectiveness in providing Welfare-to-Work services including the Board's ability to expend funds, meet performance measures, and other factors that ensure full utilization of funds.

(d) Boards shall ensure that no more than 10% of the Welfare-to-Work funds, including Welfare-to-Work state general revenue funds, are expended for administrative costs, as defined by the appropriate federal regulations and Commission policy.

§800.71. General Deobligation and Reallocation Provisions.

(a) Purpose. The purpose of this rule is to promote effective service delivery and financial planning and management, to ensure full utilization of funding, and to reallocate funds to populations in need.

(b) Scope.

(1) Sections 800.71 - 800.75 of this chapter shall apply to funds provided to workforce areas under a contract between the Board and the Commission for the following categories of funding:

(A) Child Care;

(B) Choices;

(C) Welfare-to-Work general revenue funds;

(D) Food Stamp Employment and Training; and

(E) WIA formula allocated funds.

(2) Sections 800.71 - 800.73 of this chapter shall apply to funds provided to workforce areas under a contract between the Board and the Commission for Welfare-to-Work, 42 U.S.C.A. §603 *et seq.*

(c) Effective Date. Sections 800.71 - 800.75 of this chapter shall be effective on September 1, 2001, and applicable to any funds made available to workforce areas or not yet expended by the Boards on or after September 1, 2001.

§800.72. Reporting Requirements.

(a) A Board shall submit a monthly expenditure report on or before the 20th calendar day of the following month that list information as required by the Commission for the reporting period.

(b) The Commission may require that a Board amend expenditure reports as the result of Commission reviews, audits, or other evaluations.

§800.73. Expenditure, Local Match, and Obligation Levels.

(a) For Child Care (excluding unmatched federal Child Care funds that are contingent upon a Board securing local funds), Choices, Welfare-to-Work general revenue funds, and Food Stamp Employment and Training funds provided by the Commission, the Commission may deobligate funds allocated to Boards if a Board fails to meet the following target expenditure levels applicable to the beginning of the year allocations less any deobligated amounts: (1) by the end of the fourth month following the beginning of the program year, reported expenditure level of at least 25%;

(2) by the end of the eighth month following the beginning of the program year, reported expenditure level of at least 55%; and

(3) by the end of the twelfth month following the beginning of the program year, reported expenditure levels of: (A) at least 97% for Child Care, unless the workforce area has an allocation of less than \$5,000,000, in which case the Board shall expend at least 95% for Child Care;

(B) at least 95% for Choices;

(C) at least 95% for Welfare-to-Work general revenue funds; and

(D) 100% for Food Stamp Employment and Training, unless federal requirements permit a lower amount, in which case the level shall be at least 95%.

(b) The Commission may deobligate and reallocate, as provided in §800.74 and §800.75 of this subchapter, relating to Deobligation of Funds and Reallocation of Funds, any balances not expended by the end of the fourth month of the next program year. The Commission may consider obligated funds in reviewing the Board's compliance with subsection (a) of this section, as well as other factors necessary to evaluate a Board's performance in determining the amount of funds to deobligate and reallocate.

(c) For unmatched federal Child Care funds that are contingent upon a Board securing local match funds, a Board shall meet the following performance requirements.

(1) By the end of the fourth month following the beginning of the program year, Boards shall secure donations, transfers and certifications totaling at least 100% of the amount a Board needs to secure in order to access the unmatched federal Child Care funds available to the workforce area at the beginning of the program year.

(2) Throughout the program year and by the end of the twelfth month, Boards shall ensure completion of all donations, transfers and certifications consistent with the contribution schedules and payment plans specified in the local agreements.

(d) For WIA allocated formula funds, a Board shall meet the following reported levels for each of the categories of funding:

(1) By the end of the twelfth month following the beginning of a program year, Boards shall obligate at least 80% of the allocation for each category of funding less any amount reserved up to 10% for costs of administration.

(2) By the end of the 24th month following the beginning of a program year, Boards shall expend 100% of the allocation for each category of funding.

§800.74. Deobligation of Funds.

(a) For deobligation of Child Care (excluding unmatched federal Child Care funds that are contingent upon a Board securing local funds), Choices, Welfare-to-Work general revenue funds, and Food Stamp Employment and Training funds, the Commission may, for the category of funding:

(1) deobligate all or part of the difference between a Board's actual expenditure level and the target expenditure level described in §800.73(a) and (b) of this subchapter (relating to Expenditure, Local Match and Obligation Levels), as applicable for each category of funding for that period; and

(2) consider a Board's justification of current and projected service levels and related performance data in determining to deobligate.

(b) For deobligation of unmatched federal Child Care funds that are contingent upon a Board securing local funds, the Commission may deobligate, at any time following the fourth month of the program year, all or part of the difference between a Board's actual level of secured and completed match and the level of performance that is required as described in §800.73(c) of this subchapter.

(c) For deobligation of WIA formula allocated funds, the Commission shall deobligate funds from each of these categories of funding as follows:

(1) after the end of the twelfth month following the beginning of a program year, any unobligated funds which exceed 20% of the allocation for each category of WIA formula allocated funds for that program year, less any amount reserved up to 10% for costs of administration; and

(2) after the end of the 24th month following the beginning of a program year, any unexpended funds of the program year allocation for each category of WIA formula allocated funds.

(d) For voluntary deobligation, a Board may submit a written request that the Commission deobligate a portion of the workforce area's allocation for one or more categories of funding. The Commission shall determine the amount to deobligate.

§800.75.Reallocation of Funds.

(a) Reallocation.

(1) For reallocation of Child Care, including unmatched federal funds that are contingent upon a Board securing local funds, Choices, Welfare-to-Work general revenue funds, and Food Stamp Employment and Training funds, the Commission may reallocate funds to an eligible workforce area based on the applicable allocation method set forth in this subchapter and may modify the amount to be reallocated by considering the following:

(A) the amount specified in the Board's written request for additional funds;

(B) the ability of the Board to expend funds to address the need for services in the workforce area;

(C) Board performance during the prior program year; and

(D) related factors as necessary to ensure that funds are fully utilized.

(2) For WIA formula fund allocations, the Commission shall reallocate funds as provided in WIA §128 and §133.

(b) Eligibility.

(1) For a workforce area to be eligible for a reallocation of Child Care (excluding unmatched federal funds that are contingent upon a Board securing local funds), Choices, Welfare-to-Work general revenue funds, and Food Stamp Employment and Training funds, a Board shall:

(A) have met targeted expenditure levels as required by §800.73(a) and (b) of this subchapter, as applicable, for that period;

(B) have not expended more than 100% of the workforce area's allocation for the category of funding;

(C) have demonstrated that expenditures conform to cost category limits for funding;

(D) have demonstrated the need for and ability to use additional funds;

(E) be current on expenditure reporting;

(F) be current with all single audit requirements; and

(G) not be under sanction.

(2) For a workforce area to be eligible for a reallocation of unmatched federal Child Care funds that are contingent upon a Board securing local funds, the workforce area's Board shall have met the level for securing and completing local match requirements set out in §800.73(c) of this subchapter, relating to Expenditure, Local Match, and Obligation Levels.

(3) For a workforce area to be eligible for a reallocation of WIA formula allocated funds, the Board shall have met the obligation or expenditure requirement for each category of WIA formula allocated funds applicable to the program year.

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

Filed with the Office of the Secretary of State, on June 15, 2001.

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For further information, please call: (512) 463-2573

Subchapter C. REALLOCATION OF FUNDS

40 TAC §§800.81 - 800.86

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The repeal is proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Texas Labor Code, Chapter 302, and Texas Human Resources Code, Chapters 31 and 44.

§800.81. General Provisions.

§800.82. Definitions.

§800.83. Funds Utilization and Service Level Plan and Reports.

§800.84. Required Expenditure, Local Match, and Obligation Levels.

§800.85. Deobligation of Funds.

§800.86. Reallocation of Funds.

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

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