

Section 800.101, 800.102, 800.112-800.115, 800.118 and 800.120 Incentive Award Rules

The following rule adoption will be effective May 24, 2000.

The Texas Workforce Commission (Commission) adopts new §800.120 and amendments to §§800.101, 800.102, 800.113, 800.114 and 800.118, concerning the Workforce Investment Act (WIA) Incentive Awards, with changes, and amendments to §§800.112 and 800.115, concerning WIA Incentive Awards, without changes, to the proposed text as published in the March 3, 2000, issue of the *Texas Register* (25 TexReg 1870).

The WIA principles are streamlining services, empowering individuals, universal access, increased accountability, a 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.

The purpose of these rules is to establish local workforce development board (Board) eligibility criteria for incentive awards reflective of WIA principles and the principles of Texas' vision as outlined in the Texas Strategic Five-Year State Workforce Investment Plan for Title I of the Workforce Investment Act of 1998 and the Wagner-Peyser Act for the Period of July 1, 1999 -- June 30, 2004 -- Transition Plan (State Plan). Specifically, the changes to the rules are for the following purposes: providing uniform uses of terms; updating the rules to reflect the WIA law, which replaced JTPA; replacing the definition for caseload reduction; adding definitions for exemplary performance, local coordination, regional cooperation, and workforce area; amending the definition of core outcome measures to include performance measures approved by the Legislative Budget Board; and using the term "active TANF cases" in the definition of caseload reduction to clarify that caseload reduction is evaluated based on the number of families who received Temporary Assistance for Needy Families (TANF) assistance during specific time periods. The definition for local coordination emphasizes the importance of Boards coordinating workforce services provided by the Commission but not funded through the Boards, as well as workforce services funded by sources other than the Commission. The list of grants contained in the proposed definition provides examples of such programs and is not intended to be an exhaustive list of all possible programs. Section 800.113 is amended to clarify that five is the maximum number of non-monetary awards available each fiscal year.

As provided by WIA (29 U.S.C. §2801 *et seq.*) and the federal regulations (specifically 20 C.F.R. 665.300 *et seq.*), the State is responsible for oversight of WIA funds administered by the Boards and, as appropriate, awarding incentive awards for

outstanding performance by the Boards. The State has developed §800.120, the WIA incentive awards policy, to meet these statutory and regulatory requirements. A provision is included in §800.120 which provides that in determining eligibility for an incentive award, the Commission may consider whether a Board reached a specified minimum expenditure level during the previous program year. It is anticipated that a similar provision will be added to the eligibility requirements for all awards of state reserve WIA funds.

The Commission received public comments on the rules from one Board, the West Central Workforce Development Board. The commenter supported the rules and requested clarifications on some aspects of the rules. The Commission has explained the non-substantive changes to the proposed text in its responses to the comments that follow and incorporated additional non-substantive changes for purposes of clarity.

Comment: The commenter stated that overall, the proposed rules offer an exciting and new approach to incentives that should encourage workforce areas to strive for high performance and continuous improvement. The commenter supported the approach of recognizing a limited number of Boards with monetary and non-monetary awards and appreciated the flexibility of the eligibility criteria.

Response: The Commission agrees with the commenter and believes that competition among Boards and recognition of Boards that excel are effective methods of improving workforce training and services in Texas.

Comment: Regarding §800.114(b), Monetary Incentive Awards, the commenter stated that the last sentence indicates that "up to" five top performing Boards will receive monetary incentives; however, §800.118 states that "The monetary Incentive Award Pool will be awarded "to" the top five Boards . . .". The commenter requested clarification on whether monetary awards will be made to five Boards or up to five Boards.

Response: Both §§800.114 and 800.118 (adopted by the Commission to be effective April 1, 1998) address monetary incentive awards funded with incentive award pool monies, which are different from the WIA local incentive awards available from WIA funds. The Commission proposed the amendments to §§800.114 and 800.118 to provide uniform use of terms and not to make substantive changes to either rule. However, to clarify that the Commission intends that monetary incentive awards be awarded to the five top performing Boards, §800.118 is modified to state that the criteria for awarding monetary incentives are contained in §800.114. The Commission will propose the repeal of §800.118 in the future.

Comment: Regarding §800.118, Distribution of Incentive Awards, the commenter stated that this section describes the process of distribution for monetary awards, but does not provide a description of distribution for non-monetary awards. The commenter recommended that a description of the non-monetary award process be provided here or a statement be provided as to who, how and when that process will be determined.

Response: The Commission proposed the amendments to §800.118 (adopted by the Commission to be effective April 1, 1998) to provide uniform use of terms, and not to make substantive changes to the rule. However, to clarify the point raised by the commenter, the Commission refers the commenter to §800.113 (adopted effective April 1, 1998), which provides a description of the non-monetary award eligibility determination and award distribution process. Since the information requested is currently provided in §800.113, the Commission does not see a need to repeat the information in §800.118. Changes to §800.113 are added to clarify the non-monetary award process.

Comment: Regarding §800.120(b)(2)(F), the commenter stated that the language suggests that a Board's performance will be compared to other Boards. In both (A) and (D) of this same section, the wording used is "relative to" rather than "compared with." The commenter recommended for consistency that the terminology "relative to" be used or that clarification be provided regarding the terminology "compared with." The commenter also stated that the phrase "compared with" seems to imply that a Board with better performance would be viewed more favorably, despite local economic conditions, populations served, etc.

Response: The Commission agrees with clarifying the language in the rule. The proposed rule language will be modified to delete the phrase "compared with" and insert the phrase "relative to" to clarify the Commission's intent that it may consider a variety of factors in determining the amount of funds awarded to an eligible Board, including an eligible Board's performance for each contract measure relative to other Boards' performances as well as "changes in economic condition, population characteristics, and service delivery system in the workforce area" as stated in §800.120(b)(2)(E).

Comment: Regarding §800.120(b)(2)(G), the commenter requested clarification on the language "those areas considered most critical" by providing information on who will make this determination and what criteria may be used. The commenter stated that the provision appears to allow significant flexibility, which the commenter applauds, but could prove to be difficult to define and defend, if challenged.

Response: Section 800.120(b)(2) sets forth that the Commission will determine annually the total amount of funds to be allocated for WIA local incentive awards, taking into consideration a variety of factors that are identified by the Commission. The "areas" that the Commission considers most critical in accomplishing overall system goals include performance related to the items in §800.120(b)(1)(A)-(C). A Board must meet one or more of the three exemplary performance indicators to be considered for a WIA local incentive award. The Commission may further consider such factors as those set out in §800.120(b)(2)(A)-(J) in determining the amount of funds awarded to a Board meeting one or more of the exemplary performance indicators. The Commission agrees to clarify the language in §800.120(b)(2)(G) to change "those areas" to "the elements," and to insert at the end of the proposed language the following: ", which includes performance related to each of the items listed in §800.120(b)(1)(A)-(C)." For further clarification, the phrase "for exemplary performance" and the word "areas" are deleted in §800.120(b)(1).

The rules are adopted under Texas Labor Code §301.061 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs.

§800.101. Scope and Purpose.

(a) The purpose of the incentive is to reward Local Workforce Development Boards (Boards) that meet the stated goals of the Commission to increase the local control of workforce development programs and to put Texans to work. The Board is responsible for providing strategic planning for the workforce area for all workforce development programs consolidated into the Texas Workforce Commission (Commission). The development of an integrated and coherent workforce development system at the local level is the primary focus of Boards. Thus, this policy seeks to recognize Boards for achieving high performance as a system, as well as high performance on behalf of the populations annually targeted by the Commission during the budget process. Incentives will emphasize accountability, high performance, continuous improvement and support the State in achieving workforce development goals.

(b) State variation of performance standards established by the U. S. Department of Labor and/or state standards shall be published in the *Texas Register* on an annual basis and in a numbered **Commission Letter**.

§800.102. Definitions.

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

(1) Caseload Reduction -- The caseload reduction measure is calculated by first determining the annual monthly average number of active Temporary Assistance for Needy Families (TANF) cases for each county in a workforce area for each of two consecutive years. The annual monthly average number of active TANF cases for each county within the workforce area are averaged to determine the annual monthly average TANF caseload for each Board. This procedure is then repeated for the second year. This results in an annual monthly average number of active TANF cases for each Board for each year. Finally, the percentage of change between the two annual monthly averages is calculated by subtracting year two from year one, dividing the difference by year one, and then multiplying the result by 100. This caseload reduction method does not mirror that promulgated by the Administration for Children and Families (ACF), U.S. Department of Health and Human Services, in calculating the State's caseload reduction factor used to determine the State's federally required participation rate.

(2) Core Outcome Measures -- Workforce Development Program performance measures adopted by the Governor and developed and recommended through the Texas Council on Workforce and Economic Competitiveness (TCWEC), or as otherwise approved by the Legislative Budget Board. TCWEC Core Outcome Measures have been adjusted to allow for a follow-up period of six months in lieu of the one-year period established by TCWEC.

(3) Earnings Gains Measure -- The average earnings of persons employed during the post-placement follow-up periods (six months) compared to the average earnings of the same persons six months prior to program entry.

(4) Employment Measure -- The annual percentage of individuals who entered unsubsidized employment subsequent to participation in job preparation services, who remained employed (by the same or another employer) six months after entering employment.

(5) Exemplary Performance -- Achievement by a Board on WIA performance measures in meeting one or more of the following criteria:

(A) exceeding contract performance measures;

(B) exceeding Commission-designated Full Service Texas Workforce Center certification standards;

(C) implementing an innovative and successful system integration as identified in a One-Stop Innovation Plan; or

(D) demonstrating exemplary performance through other means as determined by the Commission.

(6) High Performance Achievement -- The top five Boards as ranked by performance outcomes, adjusted for regional economic conditions according to the model cited in §800.115 of this title (relating to Incentive Policy Adjustment Model).

(7) Incentive Award Pool -- Funding that the Commission shall reserve during the annual budget process in sufficient amount to use to reward Boards for high performance achievement.

(8) Local Coordination -- Boards providing leadership to ensure cooperation to achieve the most effective customer service results for its population through one or more of the following:

(A) Memorandums of Understanding with required partners that achieve active implementation and integration of related services;

(B) Memorandums of Understanding with partners required by WIA §121(b)(1) but not required by 40 TAC §801.27(b) that include active implementation and integration of related services;

(C) ongoing and regular communication and training on **the** best practices and benchmarks in building systems or delivering services; or

(D) demonstrating local coordination through other means as determined by the Commission, including, but not limited to, demonstrating coordination with demonstration grants, Welfare-to-Work competitive grants, youth opportunity grants, self-sufficiency grants, and skills development grants.

(9) Local Workforce Development Boards -- A Board that is certified by the Governor of the State of Texas, has a plan approved by the Governor of the State of Texas, and is operating multiple workforce development programs through an executed contract with the Commission.

(10) Regional Cooperation -- Boards working together as a cooperative unit to provide excellence in customer service as a region through one or more of the following:

(A) submitting joint plans or agreements;

(B) engaging in ongoing and regular communication regarding the best practices and working together to implement those practices by sharing ideas, data, staff, and other resources;

(C) providing opportunities for joint training, conferences, and staff interaction; or

(D) demonstrating regional cooperation through other means as determined by the Commission.

(11) Skill Attainment Measure -- The annual measure specified by the Commission based upon the percentage of individuals who completed skill attainment activities and acquired a skill as recognized by the State or an industry in the form of an achievement as specified below:

(A) Board certification of youth and adult competency levels set in consultation with area employers and, where appropriate, educational agencies, labor organizations and community-based organizations based on such factors as entry level skills and other hiring requirements;

(B) a high school diploma;

(C) GED certificate;

(D) postsecondary education degree;

(E) occupational license;

(F) occupational certification; or

(G) other certifications recognized by the State.

(12) Workforce area -- Local Workforce Development Area designated by the Governor as provided in Texas Government Code §2308.252.

(13) Workforce Development Programs -- Job-training, employment and employment-related educational programs and functions as listed in Texas Labor Code §302.021.

§800.112. Criteria for Award.

(a) To encourage system building and accountability in meeting the needs of employers and jobseekers, the State will apply four outcome measures to establish a high performance recognition. The four outcome measures are:

(1) Employment Measures--retention in employment for six months following placement;

(2) Earnings Gains Measures--earnings over the same period;

(3) Skill Attainment Measures--work-related skills attained and documented by credentials accepted by states or industries; and

(4) Caseload Reduction--percentage decrease in TANF households.

(b) Each Board will be evaluated on these core outcome measures for high performance recognition.

(c) In order to be eligible to receive an incentive, a Board must be within 90% of the variance range established for each contract performance measure.

§800.113. Non-Monetary Incentive Awards.

(a) Non-monetary awards for high performance achievement and continuous improvement in meeting performance measures may include, but are not limited to, plaques, certificates of achievement, or other formalized recognition accolades.

(b) To be eligible for a non-monetary incentive award, a certified Board must be one of the five outstanding Boards in the state and must have demonstrated exceptional performance in one of the four specified core outcome measures, **unless otherwise approved by the Commission.**

(c) Non-monetary incentive awards will be awarded annually based on performance beginning in Fiscal Year 1998, which commenced September 1, 1997.

(d) A Board may be recognized as an outstanding performer under more than one measure.

§800.114. Monetary Incentive Awards.

(a) Amounts from the Incentive Award Pool may be distributed to Boards based on high performance achievement to a targeted population, and may be used to carry out innovative workforce investment activities consistent with state and federal requirements as determined by the Commission.

(b) A targeted population will be annually identified by the Commission in the budget process. The first three measures set out in §800.112 of this title (relating to Criteria for Award) will be applied to this targeted population, while the fourth measure will

be applied as written. **The Commission shall award monetary incentives to a maximum of five outstanding** Boards based on high performance in meeting **or exceeding** these four measures.

(c) Amounts from the Incentive Award Pool may be awarded annually based on performance beginning in Fiscal Year 1999, commencing September 1, 1998.

§800.115. Incentive Policy Adjustment Model.

(a) Incentive measures will be adjusted to assure that they are neutral with respect to local conditions.

(b) Adjustment factors considered shall be limited to economic factors, labor market conditions, geographic factors, and client characteristics.

(c) The adjustment rates shall be calculated for each of the workforce areas. The calculated rates shall be used to produce adjusted performance standard rates for each of the workforce areas.

(d) The adjusted outcome measures specified in §800.112 of this title will be published in the Texas Register prior to the award of incentive grants.

§800.118. Distribution of Incentive Awards.

The criteria for distributing monetary incentive awards are set forth in §800.114 of this title.

§800.120. WIA Local Incentive Awards.

(a) Allocation of Funding. The Commission shall determine annually the total amount of funds to be allocated from funds available through WIA §128(a) and §133(a)(1) for local incentive awards, taking into consideration availability of funds, number of workforce areas eligible for local incentive awards funds, and other factors as identified by the Commission.

(b) Eligibility Criteria for WIA Local Incentive Awards.

(1) A Board may be considered for a local incentive award in one or more of the following:

(A) regional cooperation among workforce areas;

(B) local coordination of activities carried out under WIA; and

(C) exemplary performance on local performance measures established by the Commission.

(2) In determining the amount of funds awarded to a Board, the Commission may consider such factors as:

(A) the amount of formula WIA funds allocated to the eligible Board relative to the formula allocations to the other Boards;

(B) for awards made during PY 2000, whether the Board can demonstrate that on July 1 it had expended 60 percent of the prior year WIA allocated funds;

(C) for awards made during PY 2001 and succeeding program years, whether the Board can demonstrate that it has met all expenditure requirements for eligibility for awards from State activity funds found in Subchapter B of Chapter 800 of this title (relating to Allocations and Funding);

(D) performance improvement relative to the previous year;

(E) changes in economic conditions, population characteristics, and service delivery system in the workforce area;

(F) the eligible Board's performance for each contract performance measure relative to other Boards;

(G) performance in the elements considered most critical in accomplishing overall system goals, which includes performance related to each of the items listed in §800.120(b)(1)(A)-(C);

(H) monitoring reports and resolution activities;

(I) achievement of goals outlined in a One-Stop Innovation Plan; and

(J) additional criteria consistent with implementation of WIA.

(c) Application for WIA Local Incentive Awards.

(1) Only those Boards **submitting** a written application shall be considered for local incentive awards.

(2) The Commission shall issue instructions annually which shall include the amount of funds available for awards, the maximum number of awards, and instructions for submitting applications for local incentive awards.