

PROPOSED RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*. THIS DOCUMENT WILL NOT HAVE ANY SUBSTANTIVE CHANGES BUT IS SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE *TEXAS REGISTER*.

ON MAY 18, 2004 THE TEXAS WORKFORCE COMMISSION PROPOSED THE BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated Publication Date of the Proposal in the *Texas Register*: June 4, 2004
Estimated End of Comment Period: July 5, 2004

The Texas Workforce Commission (Commission) proposes amendments to Chapter 800 General Administration, Subchapter A, General Provisions, §800.2, Subchapter B, Allocations and Funding, §§800.51-800.54, §§800.57-800.58, §800.63, §§800.71-800.75, Chapter 847 Project RIO Employment Activities and Support Services, §847.1; new §§800.65- 800.67; and the repeal of §§800.61- 800.62.

Purpose

The purposes of the changes proposed are to fulfill statutory requirements embodied in Texas Labor Code §301.001, as amended, establishing the Texas Workforce Commission to operate an integrated workforce development system in this state, in particular through the consolidation of job training, employment, and employment-related programs; to standardize, simplify, and make more consistent the procedure of determining allocations on the basis of the universe of need; to streamline and achieve administrative efficiency and effectiveness in granting allocated funds, in order to foster the integration of workforce development programs, minimize administrative burdens and costs, and maximize the proportion of funding available for services; and delete various obsolete provisions, add to various provisions to make references more accurate and complete, and make various technical corrections.

Background

Texas Labor Code §301.001, as amended, establishes the Texas Workforce Commission to operate an integrated workforce development system in this state, in particular through the consolidation of job training, employment, and employment-related programs. Texas Labor Code §302.002 directs the executive director to consolidate the administrative and programmatic functions of the programs under the authority of the Commission to achieve efficient and effective delivery of services, and also to contract with local workforce development boards for program planning and service delivery. In order to most effectively achieve an integrated workforce development system—wherein disparate and distinct programs are blended into a functionally unified whole—the Commission intends to make allocations that support integrated and consolidated workforce programs, to administer grants of allocated funds simplifying (to the maximum extent feasible) the current incongruent and confounding array of disparate federal and state programmatic requirements, funding periods, and other impediments, and to advocate and enhance achievement of integrated and consolidated workforce

development by workforce development boards. By standardizing, simplifying, and making more consistent the procedure of determining allocations on the basis of need, the Commission is helping to promote the integration and consolidation of workforce development programs. By streamlining and achieving administrative efficiency and effectiveness in granting allocated funds—including administering consolidated workforce development grants according to a unified program year, and utilizing enhanced grant closeout procedures—the Commission will facilitate a more effective use of the cash draw system, accelerate contracting in general, and accomplish greater efficiency in contracting, thereby setting the stage for decreased Agency and Board administrative costs.

The Commission invites the Boards—as well as others—to comment on the proposed rules.

Section 800.2 adds definitions for Employment Services, Project Reintegration of Offenders (RIO), Trade Act Services, and Veterans' Employment and Training; adds Employment Services, Project RIO, Trade Act Services, Veterans' Employment and Training, WIA Alternative Funding for Statewide Activities, and WIA Alternative Funding for One-Stop Enhancements, and strikes now-obsolete Welfare-to-Work for Program Year definitions; changes Program Year definitions to October 1- September 30 in order to facilitate the consolidation of allocations and to help achieve administrative efficiencies. The definition of Allocation and Food Stamp Employment and Training is simplified and clarified. "Core Outcome" Measures is replaced with "Formal" Measures (although the definition remains unchanged), and within the definition of "Performance Standard," reference to "Core Outcome" Measures is replaced with "Formal" Measures, in order to update the rules with current terminology. The definition of Local Workforce Development Area is unchanged but moved, in order to be listed in alphabetical order.

Section 800.51 broadens the scope and purpose of Subchapter B. Allocations, in concert with Texas Labor Code §301.001 and §302.002, emphasizing that the Texas Workforce Commission was established to operate an integrated workforce development system in this state, in particular through the consolidation of job training, employment, and employment-related programs. This section also clarifies that the scope and purpose of Subchapter B are enhanced by Agency procedures of contracting with Boards for allocations to promote the greatest practicable degree of administrative economy, streamlining, and effectiveness.

Section 800.52 adds definitions of accrued expenditures, contract closeout settlement package, contract period, deobligation, equal base amount, hold harmless/stop gain, and WIA formula allocated funds. This section also modifies current definitions of monthly expenditure report and obligation, and strikes the now-obsolete definition of two-parent family participation rate. Definitions are being added or modified in order to provide increased clarity in the rules. The rationale for the modification of the definition of obligation (together with a new provision proposed for inclusion in Section 800.72 dealing with contract closeout settlement package) is to provide the maximum time in which funds may be expended and obligations liquidated, consistent with contract

closeout requirements. An equal base amount in allocations is included to acknowledge that despite the wide variance in the characteristics of Texas workforce areas, each Board is similarly required to utilize infrastructure and other resources in order to provide one-stop services.

Sections 800.53 and 800.54 standardize, simplify, and make more consistent the procedure of determining allocations on the basis of need for Choices and Food Stamp Employment and Training. These sections also include technical edits not intended to effect substantive changes.

Section 800.57 adds provisions articulating that the hold harmless/stop gain procedure will be applied in the allocations for Employment Service (the hold harmless/stop gain procedure has been utilized for such allocations each year, but formerly not articulated in the rules). A provision is added that no more than ten percent of the funds expended as part of the workforce area's allocation shall be used for administrative costs, to provide consistency among the various allocations.

Section 800.58 strikes the listing of Welfare-to-Work funds reserved by the Governor, to be included in child care allocated funds, because the program has expired. A provision is added, articulating that the hold harmless/stop gain procedure will be applied in the allocations for Child Care (the hold harmless/stop gain procedure has been utilized for such allocations each year, but formerly not articulated in the rules). This section also includes minor editing not intended to effect substantive changes.

Sections 800.61 and 800.62 strike provisions covering now obsolete programs, Welfare-to-Work and School-to-Careers.

Section 800.63 clarifies one of the factors for dislocated worker allocations to make it consistent with WIA statute, and also provides details regarding the allocation of WIA Alternative Funding for Statewide Activities and WIA Alternative Funding for One-Stop Enhancements. A provision is added that no more than ten percent of the funds expended as part of the workforce area's allocation shall be used for administrative costs; this is a consistent provision for allocations and represents no change for the WIA program. A provision covering the availability of funds is stricken because it is unnecessary, as it is already adequately addressed in federal statute, and a provision is added, stating that the hold harmless/stop gain procedure will be applied in the WIA formula allocations for Adult and Youth employment and training activities (the hold harmless/stop gain procedure has been utilized for such allocations each year, but formerly not articulated in the rules).

Sections 800.65, 800.66, and 800.67 add new provisions setting forth the details regarding allocations for Project RIO, Trade Act Services, and Veterans' Employment and Training, following the same standardizing and simplifying characteristics of the Choices and Food Stamp Employment and Training allocation amendments noted above. Project RIO, Trade Act Services, and Veterans' Employment and Training are allocated in order to fulfill the statutory requirement for the Commission to operate an integrated

workforce development system in this state, in particular through the consolidation of job training, employment, and employment-related programs.

Section 800.71 adds Employment Services, Project RIO, Trade Act Services, Veterans' Employment and Training, and WIA Alternative Funding for Statewide Activities and WIA Alternative Funding for One Stop Enhancements as subject to general deobligation and reallocation provisions.

Section 800.72 clarifies that Board reporting requirements include accrued expenditures and obligations, and also provides that Board contract closeout settlement packages shall be submitted on or before 60 days following the end of the contract period, and the Commission may suspend payments, advances, or reimbursements to Boards in the cash draw system if financial reports are not submitted in a timely fashion. While these requirements have been in effect, they have not been formerly articulated in the rules. This section provides additionally that the executive director may approve a Board's request to extend the deadline for submitting a financial report or a contract closeout settlement package, if the request is received on a timely basis with sufficient justification.

Section 800.73 adds Employment Services and new allocations (Project RIO, Trade Act Services, Veterans' Employment and Training, and WIA Alternative Funding for Statewide Activities and WIA Alternative Funding for One-Stop Enhancements) and revises allocation expenditure targets, in order to simplify and streamline this procedure. Expenditure targets as of the end of the third month and ninth month of the program year are established for each allocation; however, for Trade Act Services, expenditure targets are established as of the end of the third month, sixth month, and ninth month.

Section 800.74 provides that Employment Services, Project RIO, Trade Act Services, Veterans' Employment and Training, and WIA Alternative Funding for Statewide Activities and WIA Alternative Funding for One-Stop Enhancements are subject to deobligation of all or part of the difference between a Board's actual accrued expenditure level and the target expenditure level.

Section 800.75 provides that the Commission may reallocate selected funds from Employment Services, Project RIO, Trade Act Services, Veterans' Employment and Training, and WIA Alternative Funding for Statewide Activities and WIA Alternative Funding for One-Stop Enhancements.

Section 847.1(c) is amended by striking the last sentence, thereby eliminating inconsistencies with the proposed allocation factors for Project RIO, and also providing clear direction that the Commission intends to accomplish funding integration for Project RIO.

Coordination Activities: In the development of these rules for publication and public comment the Commission sought the involvement of each of Texas' twenty-eight Boards. The Commission provided policy concepts to the Boards for consideration and review

pursuant to Texas Labor Code §302.064 and the Commission's Resolution Regarding Board Coordination in Policy Development, adopted September 24, 2002. Prior to and during this rulemaking process, the Commission considered the Boards' contributions.

During preliminary discussions regarding policy concepts covering these proposed amendments with the Texas Association of Workforce Boards in Austin on April 16, 2004 and in a telephone conference call on April 23, 2004, some concerns were expressed about the notion of proposed "equal base amounts" to be included in allocations, while others expressed support. And, while options discussed included the possibility of equal base amounts equivalent to 1/4th of 1 percent or 18% of 1 percent of selected allocations (i.e., Choices, Food Stamp Employment and Training, Project RIO, Trade Act Services, Veterans' Employment and Training, and WIA Alternative Funding for Statewide Activities and WIA Alternative Funding for One-Stop Enhancements) for each of the 28 workforce areas, the equal base amount proposed in these rule amendments is 1/10th of 1 percent for each of the 28 workforce areas, to be included in those allocations. This modest equal base amount is proposed in recognition of the infrastructure costs and other needs of every workforce board to provide one-stop services, whether the workforce area is urban and intensely populated or rural and sparsely populated.

Similarly, concerns were raised by one Board that allocations, while predominantly need-based, do not make provisions for differences in the cost of living. While it is true that allocations do not include allowances for costs of living, there is neither statutory guidance to do so, nor any clear methodological approach for doing so effectively or fairly.

Clearly, Texas workforce areas have what one might conclude are vast differences. Geographically, the largest Texas workforce area is 30 times the size of the smallest. The most populated Texas workforce area has 33 times the population of the least populated workforce area. No formula adjustment is capable of fairly or accurately equalizing or mitigating cost-of-living or cost-to-serve differences that may exist. Indeed, a nominal 1/10th of one percent equal base amount formally recognizes the challenges of vastly differing workforce boards in operating an integrated and effective workforce development system, but the rest must be left to local decision-making and control, and the effective partnerships created by the Commission and workforce boards across the state.

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.

Mark Hughes, Director of Labor Market Information, has determined that there is no affect on employment conditions in this state as a result of the proposed rules.

Luis Macias, 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.

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.

A public hearing on these proposed rules has been tentatively scheduled for June 8, 2004 at 2:00 p.m. in the Commission Meeting Room, Room 244, Texas Workforce Commission, 101 E. 15th Street, Austin, Texas 78701.

These amendments are proposed under Texas Labor Code, Title 4, §301.0015 and §302.002(d), 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 the Commission.

The rules affect Title 4, Texas Labor Code and Chapters 31, 33, and 44 of the Texas Human Resources Code.

Chapter 800. GENERAL ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

§800.2. Definitions

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

- (1) Agency — The unit of state government established under Texas Labor Code Chapter 301 that is presided over by the Commission and administered by the Executive Director to operate the integrated workforce development system and administer the unemployment compensation insurance program in this state as established under the Texas Unemployment Compensation Act, Texas Labor Code Annotated, Title 4, Subtitle A, as amended. The definition of "Agency" shall apply to all uses of the term in rules contained in this part, or unless otherwise defined, relating to the Texas Workforce Commission that are adopted after February 1, 2001.
- (2) Allocation — The amount approved by the Commission for expenditures during a specified program year, according to specific state and federal requirements.
- (3) Board — A Local Workforce Development Board created pursuant to Texas Government Code §2308.253 and certified by the Governor pursuant to Texas Government Code §2308.261. This includes such a Board when functioning as the Local Workforce Investment Board as described in the Workforce Investment Act §117 (29 U.S.C.A. §2832), including those functions required of a Youth Council, as provided for under the Workforce Investment Act §117(i). The definition of "Board" shall apply to all uses of the term in the rules contained in this part, or unless otherwise defined, relating to the Texas Workforce Commission that are adopted after February 1, 2001.
- (4) Child Care — Child care services funded through the Commission, which may include services funded under the Child Care and Development Fund, WIA, and other funds available to the Commission or a Board to provide quality child care to assist families seeking to become independent from, or who are at risk of becoming dependent on, public assistance while parents are either working or participating in educational or training activities in accordance with state and federal statutes and regulations.
- (5) Choices — The employment and training activities created under §31.0126 of the Texas Human Resources Code and funded under TANF (42 U.S.C.A. 601 *et seq.*) to assist persons who are receiving temporary cash assistance, transitioning off, or at risk of becoming dependent on temporary cash assistance or other public assistance in obtaining and retaining employment.
- (6) Commission — The body of governance of the Texas Workforce Commission composed of three members appointed by the Governor as

established under Texas Labor Code §301.002 that includes one representative of labor, one representative of employers and one representative of the public. The definition of "Commission" shall apply to all uses of the term in rules contained in this part, or unless otherwise defined, relating to the Texas Workforce Commission that are adopted after February 1, 2001.

- (7) Formal Measures — Workforce development services performance measures adopted by the Governor and developed and recommended through the Texas Workforce Investment Council (TWIC).
- (8) Employment Services — A program to match qualified job seekers with employers through a statewide network of one-stop career centers. (The Wagner-Peyser Act of 1933 [Title 29 USC, Chapter 4B] as amended by the Workforce Investment Act of 1998 [P.L. 105-220].)
- (9) ~~(8)~~ Executive Director — The individual appointed by the Commission to administer the daily operations of the Agency, which may include a person delegated by the Executive Director to perform a specific function on behalf of the Executive Director.
- (10) ~~(9)~~ Food Stamp Employment and Training (FSE&T) — A program to assist food stamp recipients to become self-supporting through participation in activities which include employment, job readiness, education, and training, as specified by federal Food Stamp Employment and Training statutes and regulations (7 U.S.C.A. 2011), and Chapter 813 of this title relating to Food Stamp Employment and Training.
- (11) Local Workforce Development Area (workforce area) — Workforce 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 USCA, §2831 and §2939].
- (12) ~~(10)~~ One-Stop Service Delivery Network — A one-stop-based network under which entities responsible for administering separate workforce investment, educational and other human resources programs and funding streams collaborate to create a seamless network of service delivery that shall enhance the availability of services through the use of all available access and coordination methods, including telephonic and electronic methods. Also referred to as the Texas Workforce Network.
- (13) Performance Measure — An expected performance outcome or result.
- (14) Performance Standard — A contracted numerical value setting the acceptable and expected performance outcome or result to be achieved for a performance measure, including Formal Measures.
- (15) Program Year — The twelve-month period applicable to the following as specified:
 - (A) Child Care: October 1- September 30;
 - (B) Choices: October 1- September 30;

- (C) Employment Services: October 1- September 30;
 - (D) Food Stamp Employment and Training October 1- September 30;
 - (E) Project RIO: October 1- September 30;
 - (F) Trade Act Services; October 1- September 30;
 - (G) Veterans' Employment and Training: October 1- September 30;
 - (H) Workforce Investment Act (WIA) Adult, Dislocated Worker, and Youth formula funds: July 1 - June 30;
 - (I) WIA Alternative Funding for Statewide Activities: October 1- September 30; and
 - (J) WIA Alternative Funding for One-Stop Enhancements: October 1- September 30;
- (16) Project Reintegration of Offenders (RIO) — A program that prepares and transitions ex-offenders released from Texas Department of Criminal Justice or Texas Youth Commission incarceration into gainful employment as soon as possible after release, consistent with provisions of the Texas Labor Code, Chapter 306, Texas Government Code §2308.312, and the Memorandum of Understanding with the Texas Department of Criminal Justice and the Texas Youth Commission.
- (17) ~~(14)~~ TANF - Temporary Assistance for Needy Families, which may include temporary cash assistance and other temporary assistance for eligible individuals, as defined in the Personal Responsibility and Work Opportunities Reconciliation Act of 1996, as amended (7 U.S.C.A. §201.1 *et seq.*) and the Temporary Assistance for Needy Families statutes and regulations (42 U.S.C.A. §601 *et seq.*, 45 C.F.R. Parts 260-265). TANF may also include the TANF State Program (TANF SP), relating to two-parent families, which is codified in Texas Human Resources Code Chapter 34.
- (18) Trade Act Services — Programs authorized by the Trade Act of 1974, as amended (and 20 CFR Part 617) providing services to dislocated workers eligible for Trade benefits through Texas workforce centers.
- (19) TWIC — Texas Workforce Investment Council appointed by the Governor pursuant to Texas Government Code §2308.052 and functioning as the State Workforce Investment Board (SWIB), as provided for under the Workforce Investment Act §111(e) (29 U.S.C.A. §2821(e)). In addition, pursuant to the Workforce Investment Act §194(a)(5) (29 U.S.C.A. §2944(a)(5)), TWIC maintains the duties, responsibilities, powers and limitations as provided in Texas Government Code §§2308.101-2308.105. Formerly known as the Texas Council on Workforce and Economic Competitiveness (TCWEC), any references to TCWEC when used in this part are now considered references to TWIC.
- (20) Texas Workforce Center Partner — an entity which carries out a workforce investment, educational or other human resources program or

activity, and which participates in the operation of the One-Stop Service Delivery Network in a workforce area consistent with the terms of a memorandum of understanding entered into between the entity and the Board.

- (21) Veterans' Employment and Training — Services established under the Jobs for Veterans Act of 2002 (Public Law 107-288, 38 U.S.C.A. §4100, 4201, and 4301) the Disabled Veterans Outreach Program (DVOP) and the Local Veterans Employment Representative (LVER) program to provide employment services to disabled veterans, veterans of the Vietnam era, and other eligible veterans and family members.
- (22) 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.
- (23) WIA formula allocated funds — funds allocated by formula to workforce areas for each of the following separate categories of services: WIA Adult, Dislocated Worker and Youth (excluding the Secretary's and Governor's reserve funds and rapid response funds).

§§§. §§. **SUBCHAPTER B. ALLOCATIONS §800.51. SCOPE AND PURPOSE**

- (a) The purpose of this rule is to interpret Texas Labor Code, §302.062, relating to the allocation of available funds for workforce training and services from the Texas Workforce Commission to workforce areas, as well as Texas Labor Code, §301.001 and §302.002, which establish the Texas Workforce Commission to operate an integrated workforce development system in this state, in particular through the consolidation of job training, employment, and employment-related programs, and direct the Executive Director to consolidate the administrative and programmatic functions under the authority of the Commission, to achieve efficient and effective delivery of services. 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 Section 302.004, satisfying federal program requirements, and operating an integrated workforce development system. This subchapter sets forth the funding to be allocated to workforce areas and the methods and procedures to be followed, in order to accomplish the consolidation and integration of workforce development programs. 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 under the terms of a properly executed contract between the Commission and a certified workforce board with an approved plan.
- (c) The allocation formulas described in this subchapter will only be applicable for allocations and executed contracts for a complete program year. For contract periods of less than a complete program year, the allocated amounts will be

negotiated between the Commission and the Board, based upon the remaining months of the program 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 determined, 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) Accrued Expenditures — Charges incurred during a given period for goods and tangible property received and services performed that cause decreases in net financial resources.
- (2) 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.
- (3) Contract Closeout Settlement Package — Financial, performance and other reports required as a condition of the contract, which must be submitted when one of the following conditions is met:
 - (A) the contract has expired;
 - (B) all available funds for the contract period have been paid out;
 - (C) all accrued expenditures chargeable to the specific contract have been incurred; or
 - (D) the period of available funds has expired or been terminated.
- (4) Contract Period — The length of time in which a contract for allocated funds between the Commission and a Board is in effect and during which funds may be expended for a specified purpose, unless prohibited by a federal grantor agency.

A contract period longer than a program year shall be specified under the terms of a properly executed contract.

- (5) Deobligation — An action adopted by the Commission to decrease an amount for a specific program and contract period in a contract with a Board for allocated funds, on the basis of provisions as set forth in §800.73 and §800.74 of the Commission rules.
- (6) Equal Base Amount — An amount equivalent to .10% (one-tenth of one percent) of a total allocation which shall be provided equally to each workforce area.
- (7) Hold Harmless/Stop Gain — A procedure that assures that a relative proportion of an allocation to a workforce area is not below 90% of the corresponding proportion for the past two years, or that the current year proportion is not above 125% of the prior two-year relative proportion.
- (8) Monthly expenditure report — A written or electronically submitted report 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.
- (9) Obligation A debt established by a legally binding contract, letter of agreement, subgrant award, or purchase order, which has been executed prior to the end of a contract period, for goods and services provided by the end of the contract period, and which will be liquidated within 60 calendar days after the end of a contract period, unless such definition is superseded by federal requirements. . .

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- (10) WIA formula allocated funds — Funds allocated by formula to workforce areas for each of the following separate categories of funding: WIA Adult, Dislocated Worker, and Youth.

§800.53. Choices

- (a) Funds available to the Commission to provide Choices services will be allocated to workforce areas using a need-based formula, in order to meet state and federal requirements, as set forth in subsection (b) of this section.
- (b) At least 80% of the Choices funds will be allocated to the workforce areas on the basis of (1) the relative proportion of the total number of all families with Choices work requirements residing within the workforce area during the most recent calendar year to the statewide total number of all families with Choices work requirements; (2) an equal base amount; and

(3) the application of a hold harmless/stop gain procedure.
- (c) No more than 10% of Choices funds expended as part of a workforce area's allocation shall be used for administrative costs, as defined by federal regulations and Commission policy.

§800.54. Food Stamp Employment and Training

- (a) Funds available to the Commission to provide Food Stamp Employment and Training (FSE&T) services under 7 U.S.C.A §2015(d) will be allocated to workforce areas using a need-based formula, as set forth in subsection (b) of this section.
- (b) At least 80% of the FS E & T funds will be allocated to the workforce areas on the basis of:
 - (1) the relative proportion of the total unduplicated number of mandatory work registrants receiving food stamps residing within the workforce area during the most recent calendar year to the statewide total unduplicated number of mandatory work registrants receiving food stamps;
 - (2) an equal base amount; and
 - (3) the application of a hold harmless/stop gain procedure.
- (c) No more than 10% of the funds expended as part of a workforce area's allocation shall be used for administrative costs, as defined by federal regulations and Commission policy.

§800.57. Employment Services

- (a) Employment Services funds available to the Commission to provide Employment Services under §7(a) of the Wagner-Peyser Act (29 U.S.C.A. Chapter 4B) will be utilized by the Commission as set forth in subsection (b) of this section.
- (b) At least 80% of the Employment Services funds under §7(a) of the Wagner-Peyser Act (29 U.S.C.A. Chapter 4B, including §49(c)) will be utilized by the Commission within the workforce areas according to the established federal formula, as follows:
 - (1) Two-thirds will be based on the relative proportion of the total civilian labor force residing within the workforce area to the statewide total civilian labor force;
 - (2) one-third will be based on the relative proportion of the total number of unemployed individuals residing within the workforce area to the statewide total number of unemployed individuals; and
 - (3) the application of a hold harmless/stop gain procedure.
- (c) No more than 10% of the funds expended as part of a workforce area's allocation shall be used for administrative costs, as defined by appropriate federal regulations and Commission policy.

§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, , 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) If Food Stamp Employment and Training child care funding is determined to be available, then 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) Children eligible for Transitional and Choices child care 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.
- (6) Allocations of child care funds will include applications of hold harmless/stop gain procedures.

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. **§800.63. Workforce Investment Act (WIA)**

- (a) Definitions. The following words and terms when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.
 - (1) Area of substantial unemployment--As defined in WIA §127(b)(2)(B) (29 U.S.C.A. §2852(b)(2)(B)) and WIA §132(b)(1)(B)(v)(III) (29 U.S.C.A. §2862(b)(1)(B)(v)(III)).
 - (2) Disadvantaged adult--As defined in WIA §132(b)(1)(B)(v)(IV) (29 U.S.C.A. §2862(b)(1)(B)(v)(IV)).
 - (3) Disadvantaged youth--As defined in WIA §127(b)(2)(C) (29 U.S.C.A. §2852(b)(2)(C)).
- (b) Scope and Authority. Funds available to the Commission under Title I of WIA for youth activities, adult employment and training activities, and dislocated worker employment and training activities shall be allocated to workforce areas or reserved for statewide activities in accordance with:
 - (1) the provisions of prior consistent state law as authorized by WIA §194(a)(1)(A) (29 U.S.C.A. §2944(a)(1)(A)), including but not limited to Texas Labor Code §302.062, as amended, and Subchapter B of this title (relating to Allocations and Funding);
 - (2) the WIA and related federal regulations as amended; and
 - (3) the WIA State Plan.
- (c) Reserves and Allocations for Youth and Adult Employment and Training Activities. The Commission shall reserve no more than 15% and shall allocate to workforce areas at least 85% of the youth activities and adult employment and training activities allotments from the United States Department of Labor.
- (d) Reserves and Allocations for Dislocated Worker Employment and Training Activities. The Commission shall allocate the dislocated worker employment and training allotment in the following manner:
 - (1) reserve no more than 15% for statewide workforce investment activities;

- (2) reserve no more than 25% for state level rapid response and additional local assistance activities and determine the proportion allocated to each activity; and
 - (3) allocate at least 60% to workforce areas.
- (e) State Adopted Elements, Formulas, and Weights. The Commission shall implement the following elements, formulas, and weights adopted for Texas in the WIA State Plan in allocating WIA funds to workforce areas.
- (1) WIA adult employment and training activities funds not reserved by the Commission under §800.63(c) of this section shall be allocated to the workforce areas as provided in WIA §132(b)(1)(B) and §133(b)(2) (29 U.S.C.A. §2863(b)(2)) based on the following:
 - (A) 33 1/3 percent on the basis of the relative number of unemployed individuals in areas of substantial unemployment in each workforce area, compared to the total number of unemployed individuals in areas of substantial unemployment in the State;
 - (B) 33 1/3 percent on the basis of the relative excess number of unemployed individuals in each workforce area, compared to the total excess number of unemployed individuals in the State; and
 - (C) 33 1/3 percent on the basis of the relative number of disadvantaged adults in each workforce area, compared to the total number of disadvantaged adults in the State.
 - (2) WIA dislocated worker employment and training activities funds not reserved by the State under §800.63(d) of this section shall be allocated to the workforce areas as provided in WIA §133(b)(2) (29 U.S.C.A. §2863(b)(2)) based on the following factors :
 - (A) insured unemployment;
 - (B) average unemployment;
 - (C) Worker Adjustment and Retaining Notification Act (29 U.S.C.A. §2101 *et seq.*) data;
 - (D) declining industries;
 - (E) farmer-rancher economic hardship; and
 - (F) long-term unemployment.
 - (3) WIA youth activities funds not reserved by the Commission under §800.63(c) of this section shall be allocated to the workforce areas as provided in WIA §128(b)(2) (29 U.S.C.A. §2853(b)(2)) based on the following:
 - (A) 33 1/3 percent on the basis of the relative number of unemployed individuals in areas of substantial unemployment in each workforce area, compared to the total number of unemployed individuals in all areas of substantial unemployment in the State;

- (B) 33 1/3 percent on the basis of the relative excess number of unemployed individuals in each workforce area, compared to the total excess number of unemployed individuals in the State; and
 - (C) 33 1/3 percent on the basis of the relative number of disadvantaged youth in each workforce area, compared to the total number of disadvantaged youth in the State.
- (g) (f). §. In making allocations of WIA formula funds, the Commission will apply hold harmless procedures, as set forth in federal regulations (20 CFR 667.135).
 - (g) No more than 10% of the funds expended as part of a workforce area's allocation shall be used for administrative costs, as defined by federal regulations and Commission policy.
 - (i) (h) ~~(g)~~ Reserved Funds. The Commission shall make available the funds reserved under §§800.63(c) and 800.63(d)(1) of this section to provide required and, if funds are available, allowable statewide activities as outlined in WIA §§129 and 134 (29 U.S.C.A. §§2854 and 2864). §§The Commission may allocate such proportion of available WIA Alternative Funding for Statewide Activities as it determines appropriate, utilizing a distribution methodology that is based on the proportionality of all amounts of WIA formula funds allocated during the same program year, as well as an equal base amount.
 - (j) The Commission may allocate such amounts of available WIA Alternative Funding for Statewide Activities as funding for One-Stop Enhancements, as it determines appropriate.
 - (k) ~~(i)~~ Expenditure Level for Statewide Activity Funding. A Board shall demonstrate an 80 percent expenditure level of prior year WIA allocated funds in order to be eligible to receive WIA Alternative Funding for Statewide Activities and WIA Alternative Funding for One-Stop Enhancements. The Commission may reduce the amount of WIA Alternative Funding for Statewide Activities and WIA Alternative Funding for One-Stop Enhancements if a Board fails to achieve an 80 percent expenditure level of prior year WIA formula allocated funds.

§800.65. Project Reintegration of Offenders (RIO)

- (a) Funds available to the Commission to provide Project RIO services shall be allocated to workforce areas using a need-based formula, as set forth in subsection (b) of this section.
- (b) At least 80% of the Project RIO funds will be allocated to workforce areas on the basis of:
 - (1) the relative proportion of the total number of parolees residing within the workforce area during the most recent calendar year to the statewide total number of parolees;
 - (2) an equal base amount; and
 - (3) the application of a hold harmless/stop gain procedure.

- (c) No more than 10% of the funds expended as part of a workforce area's allocation shall be used for administrative costs, as defined by federal regulations and Commission policy.

§800.66. Trade Act Services

- (a) Funds available to the Commission to provide Trade Act Services shall be allocated to workforce areas using a need-based formula, as set forth in subsection (b) below.
- (b) At least 80% of available Trade Act Services funds will be allocated to workforce areas on the basis of:
 - (1) the relative proportion of equally weighted proportions of the average number of workers residing in those workforce areas included on trade petitions for the two most recent calendar years to the statewide total number of workers included on trade petitions, and the average number of trade-affected workers residing in those workforce areas who are approved for training for the two most recent calendar years to the statewide total number of trade-affected workers approved for training;
 - (2) an equal base amount; and
 - (3) the application of a hold harmless/stop gain procedure.
- (b) No more than 10% of the funds expended as part of a workforce area's allocation shall be used for administrative costs, as defined by federal regulations and Commission policy.

§800.67. Veterans' Employment and Training

- (a) Funds available to the Commission to provide Veterans' Employment and Training services shall be allocated to workforce areas using a need-based formula, as set forth in subsection (b) of this section.
- (b) At least 80% of the Veterans' Employment and Training funds will be allocated to workforce areas on the basis of:
 - (1) the relative proportion of the total number of veterans residing within the workforce area who registered in the Texas Workforce Commission job matching system during the most recent calendar year to the statewide total number of veterans registered in the Texas Workforce Commission job matching system;
 - (2) an equal base amount; and
 - (3) the application of a hold harmless/stop gain procedure.
- (c) No more than 10% of the funds expended as part of a workforce area's allocation shall be used for administrative costs, as defined by 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.

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:

- (1) Child Care;
- (2) Choices;
- (3) Employment Services;
- (4)~~(D)~~ Food Stamp Employment and Training;
- (5) Project RIO;
- (6) Trade Act Services;
- (7) Veterans' Employment and Training;
- (8)() WIA formula allocated funds;
- (9) WIA Alternative Funding for Statewide Activities; and
- (10) WIA Alternative Funding for One-Stop Enhancements.

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§800.72. Reporting Requirements

- (a) A Board shall submit a monthly financial report, including accrued expenditures and obligations, 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.
- (c) A Board shall submit a contract closeout settlement package on or before 60 days following the end of the contract period.
- (d) The Commission may suspend payments, advances, or reimbursements to Boards in the cash draw system if required financial reports or contract closeout settlement packages are not submitted by the deadline.
- (e) The Executive Director may approve a Board's request of extension for the submission of a required financial report or contract closeout settlement package, if such extension request is received on a timely basis with sufficient justification.

§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, Employment Services, Food Stamp Employment and Training, Project RIO, Trade Act Services, Veterans' Employment and Training, Workforce Investment Act (WIA) Alternative Funding for Statewide Activities, and WIA Alternative Funding for One-Stop Enhancements funds provided by the Commission, the Commission may deobligate funds allocated to workforce areas, if a Board fails to meet the following target expenditure levels applicable to the beginning of the program year allocations less any deobligated amounts:

- (1) by the end of the third month following the beginning of the program year, reported expenditure level of at least 20% ;
- (2) for Trade Act Services, by the end of the sixth month following the beginning of the program year, reported expenditure level of at least 45%; and
- (3) by the end of the ninth month following the beginning of the program year, reported expenditure level of at least 70% .

(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 differences between the reported accrued expenditures and percentage targets included in subsection (a) of this section, according to the appropriate portions of the 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 formula allocated funds for each category of funding, 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, Employment Services, Food Stamp Employment and Training, Project RIO, Trade Act Services, Veterans' Employment and Training, Workforce Investment Act (WIA) Alternative Funding for Statewide Activities, and WIA Alternative Funding for One-Stop Enhancements funds provided by the Commission, the Commission may, for the category of funding :
 - (1) deobligate all or part of the difference between a Board's accrued 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, relating to Expenditure, Local Match, and Obligation Levels.
- (c) For deobligation of WIA formula allocated funds for each separate category of funds related to WIA Adult, Dislocated Worker and Youth, 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 Board chair must sign the written request and concurrently notify the designated chief elected official of the workforce area of the written request for the deobligation of funding.

§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, Employment Services, Food Stamp Employment and Training, Project RIO, Trade Act Services, Veterans' Employment and Training, Workforce Investment Act (WIA) Alternative Funding for Statewide Activities, and WIA Alternative Funding for One-Stop Enhancements funds provided by the Commission, the Commission may reallocate funds to an eligible workforce area based on the applicable method of allocation, as set forth in this subchapter and may modify the amount to be reallocated by considering the following:
 - (A) the amount specified in a Board's written request for additional funds;
 - (B) the demonstrated ability of a Board to effectively expend funds to address the need for services in the workforce area;
 - (C) Board performance during the current and 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, , Employment Services, Food Stamp Employment and Training, Project RIO, Trade Act Services, Veterans' Employment and Training, Workforce Investment Act (WIA) Alternative Funding for Statewide Activities, and WIA Alternative Funding for One-Stop Enhancements funds, the Commission may consider whether a Board:
 - (A) has met targeted expenditure levels as required by §800.73(a) and (b) of this subchapter, as applicable, for that period;
 - (B) has not expended more than 100% of the workforce area's allocation for the category of funding;
 - (C) has demonstrated that expenditures conform to cost category limits for funding;
 - (D) has demonstrated the need for and ability to use additional funds;
 - (E) is current on expenditure reporting;
 - (F) is current with all single audit requirements; and
 - (G) is not 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 Commission may consider whether a Board has 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. The

Commission may also consider the factors listed in paragraph (1) of this section that apply, including factors referenced in subparagraphs (B) -(G).

- (3) For a workforce area to be eligible for a reallocation of WIA formula allocated funds, the Commission may consider whether a Board has met the obligation or expenditure requirement for the applicable category of WIA formula allocated funds applicable to the program year. The Commission may also consider the factors listed in paragraph (1) of this section that apply, including factors referenced in subparagraphs (B) - (G).

Chapter 847. Project RIO Employment Activities and Support Services

§847.1 Purpose

- (a) Purpose. The purpose of Project RIO is to provide a statewide employment referral program designed to reintegrate into the labor force persons sentenced to a Texas Department of Criminal Justice (TDCJ) State Jail Division facility or the Institutional Division and persons committed to the Texas Youth Commission (TYC).
- (b) Scope of Rules. The Project RIO standards and guidelines, set forth in this chapter, address the roles and responsibilities of Boards to ensure that Project RIO employment activities and support services are available statewide through the Texas Workforce Centers consistent with 40 TAC Chapter 801 relating to the One-Stop Service Delivery Network. Project RIO employment activities and support services are provided to adult and youth offenders before release by the TDCJ and the TYC. Post-release employment activities and support services are provided through the Texas Workforce Centers, and are designed to provide ex-offenders with employment activities and support services that promote employment, meet the needs of Texas employers, and help reduce recidivism. The provisions in this chapter are intended to be consistent with Texas Labor Code, Chapter 306, Texas Government Code §2308.312, and the Memorandum of Understanding with the TDCJ and the TYC.
- (c) Funding Integration. The Commission intends, to the greatest extent possible, to integrate all available funding sources in the delivery of Project RIO services, and support and expand Project RIO services by leveraging the General Revenue appropriation for Project RIO and federal FSE&T funds. .