

1 **CHAPTER 800. GENERAL ADMINISTRATION**

2  
3 PROPOSED RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.  
4 THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT TO  
5 FORMATTING CHANGES AS REQUIRED BY THE *TEXAS REGISTER*.  
6

7 The Texas Workforce Commission (Commission) proposes the repeal of the following sections  
8 of Chapter 800 relating to General Administration:

9  
10 Subchapter B. Allocations, §800.73 and §800.74  
11

12 The Commission proposes the following new sections of Chapter 800 relating to General  
13 Administration:

14  
15 Subchapter B. Allocations, §800.73 and §800.74  
16

17 The Commission proposes amendments to the following sections of Chapter 800 relating to  
18 General Administration:

19  
20 Subchapter B. Allocations, §§800.52, 800.71, and 800.75  
21

22 PART I. PURPOSE, BACKGROUND, AND AUTHORITY  
23 PART II. EXPLANATION OF INDIVIDUAL PROVISIONS  
24 PART III. IMPACT STATEMENTS  
25 PART IV. COORDINATION ACTIVITIES  
26

27 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

28  
29 The purpose of the proposed Chapter 800 rule change is to establish an integrated policy for the  
30 deobligation and reallocation of Local Workforce Development Board (Board) administered  
31 funds. This policy will further the Commission's support of an integrated workforce system and  
32 will promote cost benefits through improved, administrative efficiencies in the local workforce  
33 development areas (workforce areas).  
34

35 In addition, amendments are proposed to reflect changes pursuant to House Bill (HB) 2604,  
36 enacted by the 79th Texas Legislature, Regular Session (2005), which directs the transfer of the  
37 Disabled Veterans' Outreach Program and Local Veterans' Employment Representative grant  
38 from the Agency to the Texas Veterans Commission.  
39

40 The proposed changes fulfill statutory requirements embodied in Texas Labor Code §301.001, as  
41 amended, establishing the Commission to:

- 42 (1) operate an integrated workforce development system in this state, in particular through the  
43 consolidation of job training, employment, and employment-related programs;  
44 (2) standardize, simplify, and make more consistent the procedure of determining amounts for  
45 deobligation and reallocation;

- 1 (3) streamline and achieve administrative efficiency and effectiveness in order to foster the  
2 integration of workforce development programs, minimize administrative burdens and  
3 costs, and maximize the proportion of funding available for services; and
- 4 (4) delete various obsolete provisions, add to various provisions to make references more  
5 accurate and complete, and make various technical corrections.

6  
7 Additionally, Texas Labor Code §302.002 directs the Agency's executive director to:

- 8 (1) consolidate the administrative and programmatic functions of the programs under the  
9 authority of the Commission to achieve efficient and effective delivery of services; and
- 10 (2) contract with the Boards for program planning and service delivery.

11  
12 Based on the Commission's commitment to an integrated workforce development system--  
13 wherein siloed funding streams and diverse programs are blended into a functionally unified  
14 whole--the Commission requested and received two waivers from the U.S. Department of Labor  
15 (DOL). The purpose of the waivers was to align the policies for the deobligation and  
16 reallocation of Board-administered funds. By standardizing and making the procedure of  
17 deobligation and reallocation more consistent, the Commission promotes the integration and  
18 administration of workforce development programs.

19  
20 The waivers allow the Commission to make midyear deobligations and reallocations in order to  
21 better manage workforce funding. Based on the approved waivers, the rules have been amended  
22 to allow deobligations based on an evaluation of a Board's expenditures, pertinent performance  
23 data, and a reasonable cost per participant in months five through eight of the appropriate  
24 program year for each funding source, and to integrate the processes for the reallocation of  
25 funds. This process is more responsive and allows the Commission to better address the  
26 changing needs of workforce areas. Should any related federal waivers expire, the Commission  
27 will be subject to federal requirements in effect at that time.

28  
29 The Commission believes that having its actions clearly delineated in rule provides the best  
30 opportunity for the Boards and the Commission to have a common understanding of how  
31 expenditures and performance are reviewed, and the impact of the review on potential  
32 deobligations. Boards have consistently performed well, ensuring that services are available  
33 throughout their workforce areas, but at times the expenditures and performance indicate that the  
34 formula for the allocation may be lagging behind current local economic conditions. The  
35 Commission encourages Boards to resize their program and, where appropriate, make voluntary  
36 deobligations.

37  
38 As noted, Boards' performance has permitted the Commission to minimize deobligations. Over  
39 the past six years, the Commission has deobligated less than two-thirds of one percent of block  
40 grant allocations to workforce areas. The Commission's record of carefully considered,  
41 judicious, and extremely modest deobligations further serves to promote its guiding principle:  
42 the most successful deobligation policy results in no deobligations, because services are being  
43 provided and funds expended in the workforce area to which they are allocated.

44  
45 The Commission embraces this concept and supports Boards in their efforts to meet employers'  
46 needs for qualified workers. The proposed rules establish clear standards for potential  
47 deobligations and reallocations to further foster ongoing and substantive communications

1 between the Commission in its oversight role, and the Boards in their role as stewards of the  
2 funds. The proposed rule establishes a common framework for measuring the local service  
3 delivery system against the needs-based formulas established by statute and regulation.  
4 Moreover, the proposed rule provides a significant opportunity for the Boards to offer  
5 information that informs the Commission about any activities or changes in the local economy  
6 that might mitigate a deobligation.

7  
8 The proposed rules further support the Commission's goal of an integrated workforce system  
9 and allow for increased efficiency in meeting the workforce development needs of employers  
10 and job seekers.

## 11 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

12 (Note: Minor, nonsubstantive editorial changes are made throughout Subchapter B of this  
13 chapter that do not change the meaning of the rules and, therefore, are not discussed in the  
14 Explanation of Individual Provisions.)

### 15 **SUBCHAPTER B. ALLOCATIONS**

#### 16 **§800.52. Definitions**

17  
18  
19 The Commission proposes adding new §800.52(10), the definition of "relative proportion of the  
20 program year."

#### 21 **§800.71. General Deobligation and Reallocation Provisions**

22  
23  
24 The Commission proposes amending §800.71(b)(7) by removing the reference to "Veterans'  
25 Employment and Training" as a category of funding to reflect the direction of HB 2604.  
26 Therefore, §§800.71(b)(8)–800.71(b)(10) are renumbered as new §§800.71(b)(7)–800.71(b)(9),  
27 respectively.

#### 28 **§800.73. Child Care Match Requirements and Deobligation**

29  
30  
31 The Commission proposes repealing current §800.73, Expenditure, Local Match, and Obligation  
32 Levels, and adding new §800.73, Child Care Match Requirements and Deobligation, which  
33 delineates the policy to which Boards must adhere for securing local child care matching funds,  
34 as well as the policy for potential deobligations of federal child care funds that remain  
35 unmatched after the fourth month of the program year.

#### 36 **§800.74. Deobligation of Funds**

37  
38  
39 The Commission proposes repealing current §800.74 and adding new §800.74, which establishes  
40 an integrated deobligation policy. Currently, with the exception of WIA formula allocated  
41 funds, funds may be deobligated at the end of the third and ninth months of the program year.  
42 Federal Trade Adjustment Assistance Act funds have an additional point for deobligation at the  
43 sixth month. The Commission believes the current three-month point for deobligation occurs too  
44 soon during the program year to fully analyze the relationship between expenditures, service  
45 delivery design, and performance--and the ninth month is too late in the program year to  
46  
47

1 adequately align reallocations, service delivery design, and enhancements to performance.  
2 Therefore, for all Board-administered funds including WIA formula allocated funds, the  
3 Commission proposes replacing the current three-month, six-month, and nine-month  
4 deobligation points with a new midyear deobligation period that begins at the end of the fifth  
5 month and continues through the end of the eighth month in the first year of funds availability.  
6

7 The proposed deobligation of Board-administered funds, if applicable, would be based on  
8 expenditures, pertinent performance data, and related cost per participant data occurring during  
9 the fifth month and continuing through the eighth month. For WIA formula funds, the  
10 Commission will review data during the first program year of funds availability in the  
11 appropriate program year.  
12

13 Additionally, the proposed rules set forth another deobligation point for WIA funds at the end of  
14 the first year of funds availability if Boards have not expended 80% of each category of WIA  
15 formula funds.  
16

17 Boards will be notified by the Commission of any potential deobligations and will be encouraged  
18 to voluntarily deobligate any excess funding or provide justification for projected expenditures,  
19 as set forth in the proposed rule.  
20

21 For Board-administered funds other than WIA formula allocated funds, the Commission will  
22 base a potential deobligation on each Board's expenditure of an amount equal to 90% of the  
23 corresponding proportion of the category of funds for each of the previous three months. For  
24 WIA funds, the Commission will base a potential deobligation on each Board's expenditure of an  
25 amount equal to 80% of the corresponding proportion of the category of WIA formula allocated  
26 funds for each of the previous three months.  
27

28 Funds contracted within sixty days prior to a period during which the Board may be subject to  
29 deobligations will not be subject to deobligation.  
30

31 It is important to note that the Commission currently has established an incentive for reaching an  
32 80% expenditure benchmark for WIA formula allocated funds. Boards that reach the 80%  
33 expenditure threshold at the end of the first program year are eligible to receive the  
34 Commission's Statewide Activity funds, some of the most flexible federal dollars available for  
35 unique local initiatives.  
36

37 If a Board fails to meet the 90% or 80% expenditure benchmarks for any three-month period, the  
38 Commission will review a Board's performance for the appropriate category of funds, and the  
39 reasonableness of the cost per participant for that category of funds. In reviewing a Board's  
40 performance, the Commission will determine whether 95% of the applicable performance  
41 measure has been achieved. Additionally, the Commission will determine whether a Board has  
42 achieved a reasonable cost per participant, based upon the factors set forth in §800.74(d)(2)(A)–  
43 (E).  
44

45 The proposed rule clarifies that the amount the Commission may deobligate is no greater than  
46 the difference between a Board's actual expenditures as of the end of the third consecutive month

1 in which a Board has failed, and the relative proportion of the program year's expected  
2 expenditures.

3  
4 Recognizing that an individual workforce area's service delivery system presents unique  
5 opportunities and challenges, the Commission is permitting an opportunity for Boards to justify  
6 their current and projected expenditure levels, pertinent performance data, and service levels  
7 prior to the Commission's consideration of a potential deobligation of Board-administered funds,  
8 including WIA formula allocated funds.

9  
10 **§800.75. Reallocation of Funds**

11 Currently, funds administered by the Commission, with the exception of WIA formula allocated  
12 funds, are reallocated to eligible workforce areas based on criteria in §800.75(a). A separate  
13 method for reallocating WIA formula allocated funds has been employed to address statutory  
14 requirements set forth in WIA §128 and §133. Under WIA, all workforce areas not subject to a  
15 deobligation receive amounts available for reallocation. Unlike other Board-administered funds,  
16 no consideration has been given to a workforce area's demonstrated need, capacity, or current or  
17 past performance.

18  
19 A waiver granted by the DOL waives federal requirements set forth in WIA §128 and §133 and  
20 authorizes the Commission to reallocate recaptured WIA formula funds to workforce areas using  
21 the same procedures and criteria the Commission employs for other Board-administered funds.  
22 The waiver will promote maximum expenditure of recaptured funds, enabling the Commission to  
23 streamline administrative practices and further enhance the Texas workforce system's  
24 effectiveness in meeting the needs of employers and job seekers.

25  
26 Therefore, the Commission proposes amending §800.75(a) by including WIA formula allocated  
27 funds. The Commission also proposes removing §800.75(a)(2) and §800.75(b)(3) because these  
28 paragraphs are no longer applicable. The Commission seeks to facilitate the maximum  
29 expenditure of deobligated Board-administered funds through the redistribution of WIA funds to  
30 workforce areas that have achieved not only targeted expenditure levels but also have met  
31 established performance targets. Redistributing funds based solely on whether a Board achieves  
32 its expenditure target does not fully address performance issues--such as whether the Board has  
33 met employers' needs for a highly skilled and job-ready workforce.

34  
35 The Commission also proposes amending §800.75(a) and §800.75(b)(1) by removing the  
36 reference to "Veterans' Employment and Training" funds to reflect the direction of HB 2604.  
37 Additionally, the Commission proposes amending §800.75(b)(1) to include WIA formula  
38 allocated funds.

39  
40 **Effective Date**

41 The Commission proposes that the provisions regarding the deobligation of WIA formula  
42 allocated funds based upon 80% of the relative proportion of the program year shall be in effect  
43 starting with Program Year 2006 funds (beginning July 1, 2006). The Commission further  
44 proposes that the provisions regarding the deobligation of non-WIA formula allocated funds  
45 based upon 90% of the relative proportion of the program year shall be in effect starting with  
46 Program Year 2007 funds (beginning October 1, 2006).

1  
2 **PART III. IMPACT STATEMENTS**  
3

4 Randy Townsend, Chief Financial Officer, has determined that for each year of the first five  
5 years the rules will be in effect, the following statements will apply:  
6

7 There are no additional estimated costs to the state government expected as a result of enforcing  
8 or administering the rules.  
9

10 We cannot estimate whether there will be additional costs to local governments (i.e., Boards) as a  
11 result of enforcing or administering the rules.  
12

13 There are no estimated reductions in costs to the state and local governments as a result of  
14 enforcing or administering the rules.  
15

16 There is no increase or loss in revenue to the state or local governments as a result of enforcing  
17 or administering the rules.  
18

19 Enforcing or administering the rules does not have foreseeable implications relating to costs or  
20 revenues of the state or local governments.  
21

22 There is no probable economic cost to persons required to comply with the rules.  
23

24 There is no estimated adverse economic effect on small businesses.  
25

26 In order to mitigate any potential additional costs necessary to manage services and monitor  
27 expenditures based on this new methodology, the Commission will provide Boards with a  
28 management tool to assist in the calculation of financial benchmarks.  
29

30 The Agency hereby certifies that the proposal has been reviewed by legal counsel and found to  
31 be within the Agency's legal authority to adopt.  
32

33 Mark Hughes, Director of Labor Market Information, has determined that there is no significant  
34 negative impact upon employment conditions in the state as a result of the rules.  
35

36 Luis M. Macias, Director of Workforce Development Division, has determined that for each year  
37 of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing  
38 the proposed rules will be to ensure that the review of the expenditures, performance, and per  
39 participant costs are fully understood and aligned to provide the most comprehensive  
40 understanding of the service delivery system in a workforce area before decisions are made on  
41 the deobligation of Board-administered funds.  
42  
43

44 **PART IV. COORDINATION ACTIVITIES**

45 In the development of these rules for publication and public comment, the Commission sought  
46 the involvement of each of Texas' 28 Boards and the TWC Advisory Committee. The  
47 Commission provided the policy concept regarding this rule amendment to the Boards for

1 consideration and review. During the rulemaking process, the Commission considered all  
2 information gathered in order to develop a rule that provides clear and concise direction to all  
3 parties involved.

4  
5 Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce and  
6 UI Policy, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to 512-475-3577; or e-  
7 mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments  
8 postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

9  
10 The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the  
11 Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it  
12 deems necessary for the effective administration of Agency services and activities.

13  
14 The proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.  
15

1                                   **CHAPTER 800. GENERAL ADMINISTRATION**

2  
3                   **SUBCHAPTER B. ALLOCATIONS**

4  
5                   **§800.52. Definitions**

6  
7                   The following words and terms, when used in this subchapter, shall have the following  
8                   meanings, unless the context clearly indicates otherwise:  
9

- 10                   (1)   Accrued Expenditures - Charges incurred during a given period for goods and  
11                   tangible property received and services performed that cause decreases in net  
12                   financial resources.
- 13  
14                   (2)   All-Family Participation Rate -The percentage of all families receiving TANF  
15                   benefits that a state must engage in an approved work activity for a specified  
16                   number of hours per week as provided by the Personal Responsibility and  
17                   Work Opportunities Reconciliation Act of 1996, §407, as amended.
- 18  
19                   (3)   Contract Closeout Settlement Package - Financial, performance and other  
20                   reports required as a condition of the contract, which must be submitted when  
21                   one of the following conditions is met:  
22  
23                   (A) the contract has expired;  
24  
25                   (B) all available funds for the contract period have been paid out;  
26  
27                   (C) all accrued expenditures chargeable to the specific contract have been  
28                   incurred; or  
29  
30                   (D) the period of available funds has expired or been terminated.
- 31  
32                   (4)   Contract Period - The length of time in which a contract for allocated funds  
33                   between the Commission and a Board is in effect and during which funds may  
34                   be expended for a specified purpose, unless prohibited by a federal grantor  
35                   agency. A contract period longer than a program year shall be specified under  
36                   the terms of a properly executed contract.
- 37  
38                   (5)   Deobligation - An action adopted by the Commission to decrease an amount  
39                   for a specific program and contract period in a contract with a Board for  
40                   allocated funds, on the basis of provisions as set forth in §800.73 and §800.74  
41                   of the Commission rules.
- 42  
43                   (6)   Equal Base Amount - An amount equivalent to .10% (one-tenth of one percent)  
44                   of a total allocation which shall be provided equally to each workforce area.
- 45  
46                   (7)   Hold Harmless/Stop Gain - A procedure that assures that a relative proportion  
47                   of an allocation to a workforce area is not below 90% of the corresponding



1 proportion for the past two years, or that the current year proportion is not  
2 above 125% of the prior two-year relative proportion.

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

8  
9 (9) Obligation - A debt established by a legally binding contract, letter of  
10 agreement, sub-grant award, or purchase order, which has been executed prior  
11 to the end of a contract period, for goods and services provided by the end of  
12 the contract period, and which will be liquidated 60 calendar days after the end  
13 of a contract period, unless such definition is superceded by federal  
14 requirements.

15  
16 (10) Relative proportion of the program year - The corresponding part of the  
17 program year that is used to compare expenditures. That is, if 50% of the  
18 program year has transpired, then the relative proportion of the program year is  
19 50%.

20  
21 ~~(11)~~(10) WIA Formula Allocated Funds - Funds allocated by formula to workforce  
22 areas for each of the following separate categories of funding: WIA Adult,  
23 Dislocated Worker, and Youth.

## 24 25 **§800.71. General Deobligation and Reallocation Provisions**

26  
27 (a) Purpose. The purpose of this rule is to promote effective service delivery, ~~and~~  
28 financial planning, and management, to ensure full utilization of funding, and to  
29 reallocate funds to populations in need.

30  
31 (b) Scope. Sections 800.71-800.75 of this chapter shall apply to funds provided to  
32 workforce areas under a contract between the Board and the Commission for the  
33 following categories of funding:

34  
35 (1) Child Care;

36  
37 (2) Choices;

38  
39 (3) Employment Services;

40  
41 (4) Food Stamp Employment and Training;

42  
43 (5) Project RIO;

44  
45 (6) Trade Act Services;

46  
47 ~~(7) Veterans' Employment and Training~~

1  
2 ~~(7)(8)~~ WIA Formula Allocated Funds;

3  
4 ~~(8)(9)~~ WIA Alternative Funding for Statewide Activities; and

5  
6 ~~(9)(10)~~ WIA Alternative Funding for One-Stop Enhancements.

7  
8 **§800.73 Child Care Match Requirements and Deobligation**

9  
10 (a) A Board shall meet the following requirements for unmatched federal Child Care  
11 funds that are contingent upon a Board securing local funds.

12  
13 (1) By the end of the fourth month following the beginning of the program year, a  
14 Board shall secure donations, transfers, and certifications totaling at least 100%  
15 of the amount it needs to secure in order to access the unmatched federal Child  
16 Care funds available to the workforce area at the beginning of the program  
17 year.

18  
19 (2) Throughout the program year and by the end of the twelfth month, a Board  
20 shall ensure completion of all donations, transfers, and certifications consistent  
21 with the contribution schedules and payment plans specified in the local  
22 agreements.

23  
24 (b) The Commission may deobligate, at any time following the fourth month of the  
25 program year, all or part of the difference between a Board's actual level of secured  
26 and completed match and the level of performance that is required, as set forth in  
27 §800.73(a).

28  
29 **~~§800.73. Expenditure, Local Match, and Obligation Levels~~**

30  
31 ~~(a) For Child Care (excluding unmatched federal Child Care funds that are contingent~~  
32 ~~upon a Board securing local funds), Choices, and Employment Services, Food Stamp~~  
33 ~~Employment and Training, Project RIO, Trade Act Services, Veterans' Employment~~  
34 ~~and Training, Workforce Investment Act (WIA) Alternative Funding for Statewide~~  
35 ~~Activities, and WIA Alternative Funding for One-Stop Enhancements funds~~  
36 ~~provided by the Commission, the Commission may deobligate funds allocated to~~  
37 ~~workforce areas, if a Board fails to meet the following target expenditure levels~~  
38 ~~applicable to the beginning of the program year allocations less any deobligated~~  
39 ~~amounts:~~

40  
41 ~~(1) by the end of the third month following the beginning of the program year,~~  
42 ~~reported expenditure level of at least 20%;~~

43  
44 ~~(2) for Trade Act Services, by the end of the sixth month following the beginning~~  
45 ~~of the program year, reported expenditure level of at least 45%; and~~  
46

1 ~~(3) by the end of the ninth month following the beginning of the program year,~~  
2 ~~reported expenditure level of at least 70%.~~

3  
4 ~~(b) The Commission may deobligate and reallocate, as provided in § 800.74 and § 800.75~~  
5 ~~of this subchapter, relating to Deobligation of Funds and Reallocation of Funds, any~~  
6 ~~differences between the reported accrued expenditures and percentage targets~~  
7 ~~included in subsection (a) of this section, according to the appropriate portions of the~~  
8 ~~program year. The Commission may consider obligated funds in reviewing the~~  
9 ~~Board's compliance with subsection (a) of this section, as well as other factors~~  
10 ~~necessary to evaluate a Board's performance in determining the amount of funds to~~  
11 ~~deobligate and reallocate.~~

12  
13 ~~(c) For unmatched federal Child Care funds that are contingent upon a Board securing~~  
14 ~~local match funds, a Board shall meet the following performance requirements.~~

15  
16 ~~(1) By the end of the fourth month following the beginning of the program year,~~  
17 ~~Boards shall secure donations, transfers and certifications totaling at least~~  
18 ~~100% of the amount a Board needs to secure in order to access the unmatched~~  
19 ~~federal Child Care funds available to the workforce area at the beginning of the~~  
20 ~~program year.~~

21  
22 ~~(2) Throughout the program year and by the end of the twelfth month, Boards~~  
23 ~~shall ensure completion of all donations, transfers and certifications consistent~~  
24 ~~with the contribution schedules and payment plans specified in the local~~  
25 ~~agreements.~~

26  
27 ~~(d) For WIA formula allocated funds for each category of funding, a Board shall meet~~  
28 ~~the following reported levels for each of the categories of funding:~~

29  
30 ~~(1) By the end of the twelfth month following the beginning of a program year,~~  
31 ~~Boards shall obligate at least 80% of the allocation for each category of~~  
32 ~~funding less any amount reserved up to 10% for costs of administration.~~

33  
34 ~~(2) By the end of the 24th month following the beginning of a program year,~~  
35 ~~Boards shall expend 100% of the allocation for each category of funding.~~

### 36 37 §800.74. Deobligation of Funds

38  
39 (a) The Commission may deobligate the following funds midyear, as set forth in  
40 §800.74(b):

41  
42 (1) Child Care (with the exception of unmatched federal Child Care funds that are  
43 contingent upon a Board securing local funds, as set forth in § 800.73),  
44 Choices, Employment Service, Food Stamp Employment and Training, Project  
45 RIO, Trade Act Services, WIA Alternative Funding for Statewide Activities,  
46 and WIA Alternative Funding for One-Stop Enhancements funds: if a Board  
47 fails to achieve the expenditure of an amount corresponding to 90% or more of

1 the relative proportion of the program year; and

2  
3 (2) WIA formula allocated funds:

4  
5 (A) if a Board fails to achieve the expenditure of an amount corresponding to  
6 80% or more of the relative proportion of the program year for each  
7 category of WIA formula allocated funds; and

8  
9 (B) after the end of the twelfth month following the beginning of a program  
10 year, any unexpended funds that exceed 20% of the allocation for each  
11 category of WIA formula allocated funds for the program year.

12  
13 (b) For midyear deobligations during the first program year:

14  
15 (1) Boards that are failing to meet the expenditure thresholds, as set forth in  
16 §800.74(a), have not achieved at least 95% of the applicable performance  
17 measures, or have not achieved a reasonable per participant cost, as set forth in  
18 §800.74(d)(2), at the end of months five, six, seven, or eight will be reviewed  
19 to determine whether they also have failed to meet such thresholds in the two  
20 previous months.

21  
22 (2) Boards that have failed to meet expenditure and performance thresholds for  
23 three consecutive months, as set forth in §800.74(b)(1), may be subject to  
24 deobligation.

25  
26 (c) The Commission may deobligate no more than the difference between a Board's  
27 actual expenditures as of the end of the three-consecutive-month period during which  
28 the Board has failed to expend the amount corresponding to the relative proportion of  
29 the program year, as set forth in §800.74(a), and the amount corresponding to the  
30 relative proportion of the program year.

31  
32 (d) The Commission will not deobligate funds from a Board that failed to meet the  
33 expenditure thresholds as set forth in §800.74(a):

34  
35 (1) if less than 60 days prior to the potential deobligation period, a contract  
36 amendment has been executed with the Board for a supplemental allocation or  
37 reallocation of funds in the same program category of funding; or

38  
39 (2) if a Board has achieved at least 95% of the applicable performance measures  
40 and has achieved a reasonable per participant cost, as of the end of the third  
41 consecutive month during which the Board has failed to expend the amount  
42 corresponding to the relative proportion of the program year as set forth in  
43 §800.74(a). Factors that the Commission may review to determine the  
44 reasonableness of per participant costs include:

45  
46 (A) the statewide cost per participant served;  
47

1 (B) the Board's service levels for each category of funding, as specified in the  
2 approved Board plan;

3  
4 (C) transfers or redesignations of funds;

5  
6 (D) expenditures reported in accordance with the Agency's financial reporting  
7 requirements; and

8  
9 (E) other local factors that may affect the cost of providing services.

10  
11 (e) The Commission may deobligate funds if a Board is not meeting expenditure  
12 thresholds as set forth in §800.74(a), has not achieved at least 95% of the applicable  
13 performance measures, or has not achieved a reasonable per participant cost.

14  
15 (f) A Board subject to deobligation for failure to meet the requirements set forth in  
16 §800.74(d)(2) shall submit a written justification within five working days of the  
17 date of notification from the Commission. A Board may voluntarily provide a  
18 written justification prior to receiving a formal request from the Commission. The  
19 written justification shall provide sufficient detail regarding the actions a Board will  
20 take to address its deficiencies, and may include:

21  
22 (1) expansion of services proportionate to the available resources;

23  
24 (2) projected service levels and related performance;

25  
26 (3) outstanding obligations; and

27  
28 (4) any other factors a Board would like the Commission to consider.

29  
30 (g) To the extent this section is found not to comply with federal requirements, or  
31 should any related federal waivers expire, the Commission will be subject to federal  
32 requirements in effect, as applicable.

33  
34 ~~§800.74. Deobligation of Funds~~

35  
36 ~~(a) For deobligation of Child Care (excluding unmatched federal Child Care funds that~~  
37 ~~are contingent upon a Board securing local funds), Choices, Employment Services,~~  
38 ~~Food Stamp Employment and Training, Project RIO, Trade Act Services, Veterans'~~  
39 ~~Employment and Training, Workforce Investment Act (WIA) Alternative Funding~~  
40 ~~for Statewide Activities, and WIA Alternative Funding for One-Stop Enhancements~~  
41 ~~funds provided by the Commission, the Commission may, for the category of~~  
42 ~~funding:~~

43  
44 ~~(1) deobligate all or part of the difference between a Board's accrued expenditure~~  
45 ~~level and the target expenditure level described in §800.73(a) and (b) of this~~  
46 ~~subchapter, relating to Expenditure, Local Match and Obligation Levels, as~~  
47 ~~applicable for each category of funding for that period; and~~

1  
2 ~~(2) consider a Board's justification of current and projected service levels and~~  
3 ~~related performance data in determining to deobligate.~~

4  
5 ~~(b) For deobligation of unmatched federal Child Care funds that are contingent upon a~~  
6 ~~Board securing local funds, the Commission may deobligate, at any time following~~  
7 ~~the fourth month of the program year, all or part of the difference between a Board's~~  
8 ~~actual level of secured and completed match and the level of performance that is~~  
9 ~~required as described in § 800.73(e) of this subchapter, relating to Expenditure, Local~~  
10 ~~Match, and Obligation Levels.~~

11  
12 ~~(c) For deobligation of WIA formula allocated funds for each separate category of funds~~  
13 ~~related to WIA Adult, Dislocated Worker and Youth, the Commission shall~~  
14 ~~deobligate funds from each of these categories of funding as follows:~~

15  
16 ~~(1) after the end of the twelfth month following the beginning of a program year,~~  
17 ~~any unobligated funds which exceed 20% of the allocation for each category of~~  
18 ~~WIA formula allocated funds for that program year, less any amount reserved~~  
19 ~~up to 10% for costs of administration; and~~

20  
21 ~~(2) after the end of the 24th month following the beginning of a program year, any~~  
22 ~~unexpended funds of the program year allocation for each category of WIA~~  
23 ~~formula allocated funds.~~

24  
25 ~~(d) For voluntary deobligation, a Board may submit a written request that the~~  
26 ~~Commission deobligate a portion of the workforce area's allocation for one or more~~  
27 ~~categories of funding. The Board chair must sign the written request and~~  
28 ~~concurrently notify the designated chief elected official of the workforce area of the~~  
29 ~~written request for the deobligation of funding.~~

30  
31 **§800.75. Reallocation of Funds**

32  
33 (a) Reallocation.

34  
35 ~~(1)~~ For reallocation of Child Care, including unmatched federal funds that are  
36 contingent upon a Board securing local funds, Choices, Employment [Service](#)  
37 [Services](#), Food Stamp Employment and Training, Project RIO, Trade Act  
38 Services, ~~Veterans' Employment and Training, Workforce Investment Act~~  
39 [WIA \(WIA\) Formula Allocated Funds, WIA](#) Alternative Funding for  
40 Statewide Activities, and WIA Alternative Funding for One-Stop  
41 Enhancements funds provided by the Commission, the Commission may  
42 reallocate funds to an eligible workforce area based on the applicable method  
43 of allocation, as set forth in this subchapter and may modify the amount to be  
44 reallocated by considering the following:

45  
46 ~~(1)(A)~~ the amount specified in -a Board's written request for additional funds;  
47

1 ~~(2)(B)~~ the demonstrated ability of a Board to effectively expend funds to  
2 address the need for services in the workforce area;

3  
4 ~~(3)(C)~~ Board performance during the current and prior program year; and

5  
6 ~~(4)(D)~~ related factors as necessary to ensure that funds are fully utilized.  
7

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

10  
11 (b) Eligibility.

12  
13 (1) For a workforce area to be eligible for a reallocation of Child Care (excluding  
14 unmatched federal funds that are contingent upon a Board securing local  
15 funds), Choices, Employment Services, Food Stamp Employment and  
16 Training, Project RIO, Trade Act Services, ~~Veterans' Employment and~~  
17 ~~Training, Workforce Investment Act~~ WIA (WIA) Formula Allocated Funds,  
18 WIA Alternative Funding for Statewide Activities, and WIA Alternative  
19 Funding for One-Stop Enhancements funds, the Commission may consider  
20 whether a Board:

21  
22 (A) has met targeted expenditure levels as required by §800.74(a) and  
23 §800.74(b) ~~§800.73(a) and (b)~~ of this subchapter, as applicable, for that  
24 period;

25  
26 (B) has not expended more than 100% of the workforce area's allocation for  
27 the category of funding;

28  
29 (C) has demonstrated that expenditures conform to cost category limits for  
30 funding;

31  
32 (D) has demonstrated the need for and ability to use additional funds;

33  
34 (E) is current on expenditure reporting;

35  
36 (F) is current with all single audit requirements; and

37  
38 (G) is not under sanction.  
39

40 (2) For a workforce area to be eligible for a reallocation of unmatched federal  
41 Child Care funds that are contingent upon a Board securing local funds, the  
42 Commission may consider whether a Board has met the level for securing and  
43 completing local match requirements set out in §800.73(a)(e) of this  
44 subchapter, relating to Expenditure, Local Match, and Obligation Levels. The  
45 Commission may also consider the factors listed in paragraph (1) of this  
46 section that apply, including factors referenced in subparagraphs (B)-(G).  
47

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

7  
8 (c) To the extent this section does not comply with federal requirements, or should any  
9 related federal waivers expire, the Commission will be subject to federal  
10 requirements in effect at that time.