

1 **CHAPTER 802. INTEGRITY OF THE TEXAS WORKFORCE SYSTEM**

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

7 **ON NOVEMBER 12, 2013, THE TEXAS WORKFORCE COMMISSION PROPOSED THE**
8 **BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS REGISTER.**

9
10 Estimated Publication Date of the Proposal in the *Texas Register*: **November 29, 2013**
11 Estimated End of Comment Period: **December 30, 2013**
12

13 The Texas Workforce Commission (Commission) proposes the following new section to Chapter
14 802, relating to Integrity of the Texas Workforce System:

15
16 Subchapter I. Incentive Awards, §802.169
17

18 The Commission proposes amendments to the following sections of Chapter 802, relating to
19 Integrity of the Texas Workforce System:

- 20
- 21 Subchapter A. Purpose and General Provisions, §802.1
- 22 Subchapter D. Agency Monitoring Activities, §§802.61 - 802.66
- 23 Subchapter E. Board and Workforce Service Provider Monitoring Activities, §§802.81 -
- 24 802.87
- 25 Subchapter F. Performance and Accountability, §§802.101 - 802.104
- 26 Subchapter G. Corrective Actions, §§802.121 - 802.125
- 27 Subchapter I. Incentive Awards, §§802.161, 802.162, and 802.164
- 28

- 29 PART I. PURPOSE, BACKGROUND, AND AUTHORITY
- 30 PART II. EXPLANATION OF INDIVIDUAL PROVISIONS
- 31 PART III. IMPACT STATEMENTS
- 32 PART IV. COORDINATION ACTIVITIES
- 33

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

35 Senate Bill (SB) 307, enacted by the 83rd Texas Legislature, Regular Session (2013), added
36 Texas Labor Code, Chapter 315, which transferred adult education and literacy (AEL) programs
37 from the Texas Education Agency (TEA) to the Commission no later than January 1, 2014.

38
39 SB 307 mandates that the Commission:

- 40 --develop, administer, and support a comprehensive statewide adult education program and
- 41 coordinate related federal and state programs for the education and training of adults;
- 42 --develop the mechanism and guidelines for the coordination of comprehensive adult education
- 43 and related skills training services for adults with other entities, including public agencies and
- 44 private organizations, in planning, developing, and implementing related programs;
- 45 --administer adult education funding;
- 46 --prescribe rules and standards for teacher certification and accreditation; and

1 --develop a standardized assessment mechanism, and monitor and evaluate educational and
2 employment outcomes of students who participate in AEL programs.
3

4 In addition, SB 307 mandates that the Agency use a competitive procurement process to award
5 contracts to service providers of local education programs. To complete a competitive
6 procurement and have contracts in place by July 2014, a January 2014 target date has been set
7 for the adoption of new Chapter 805, regarding AEL programs.
8

9 SB 307 expressly requires the Commission to develop and establish a process for awarding
10 performance incentive funds annually. In developing the process for awarding such funds, the
11 Commission was directed to prescribe fiscal and programmatic performance criteria to be used to
12 evaluate the performance of entities delivering AEL services. Further, as part of this process, SB
13 307 requires procedures for taking corrective action. Chapter 802 sets out Agency standards for
14 program and fiscal monitoring, performance and accountability, and corrective actions and
15 incentive awards. The proposed amendments to Chapter 802 are intended to apply Agency
16 standards to AEL programs, as appropriate, consistent with the Adult Education and Family
17 Literacy Act, federal regulations, National Reporting System for Adult Education, and OMB
18 Circulars.
19

20 Further, to fully incorporate AEL programs into the Agency's administrative oversight
21 framework, amendments are necessary in Chapter 800, regarding General Administration. To
22 ensure a seamless transition of rules, the Chapter 800 amendments and new Chapter 805 are
23 proposed concurrently with this rulemaking.
24

25 To better understand the major issues currently facing adult education, the Commission held a
26 series of nine public meetings across the state to hear from stakeholders concerning the transfer
27 of the AEL programs from TEA to the Agency, and to gather input about what is currently
28 working well and where there is opportunity for improvement. AEL stakeholder communication
29 has continued throughout the transition, and the Commission greatly values the thoughts,
30 recommendations, and suggestions provided by the AEL stakeholder community.
31

32 The purpose of the proposed Chapter 802 amendments is to:

33 --apply the following to AEL grant recipients and AEL service providers, as appropriate:

34 --Provisions governing monitoring responsibilities;

35 --Provisions ensuring accountability in meeting the needs of customers, ensuring that
36 performance targets are met or exceeded, and describing Commission policies for
37 noncompliance;

38 --Provisions for imposing corrective actions for failure to ensure compliance with contracted
39 performance measures, contract provisions, and other Agency-determined standards; and

40 --Provisions regarding incentive awards, rewarding the meeting or exceeding of performance
41 benchmarks, and accomplishing the Commission's goals to fulfill the workforce needs of
42 employers and to put Texans to work; and

43 --make technical changes, as necessary.
44
45
46

1 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

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

4
5 **SUBCHAPTER A. PURPOSE AND GENERAL PROVISIONS**

6 **The Commission proposes the following amendments to Subchapter A:**

7
8 **§802.1. Purpose and General Provisions**

9 Section 802.1(a) adds that the purpose of Subchapter A is "to implement Texas Labor Code,
10 Chapter 315, regarding Adult Education and Literacy programs."

11
12 **SUBCHAPTER D. AGENCY MONITORING ACTIVITIES**

13 **The Commission proposes the following amendments to Subchapter D:**

14
15 **§802.61. Purpose**

16 Section 802.61 adds "AEL grant recipients" and "AEL service providers" as entities subject to
17 the provisions of Subchapter D, regarding agency monitoring activities.

18
19 **§802.62. Program and Fiscal Monitoring**

20 Section 802.62 adds "AEL grant recipients" and "AEL service providers" as entities subject to
21 the provisions regarding program and fiscal monitoring.

22
23 Section 802.62(b)(2) adds "U.S. Department of Education, Office of Vocational and Adult
24 Education guidance." AEL grant recipients' and AEL service providers' compliance with this
25 guidance will be assessed by program and fiscal monitoring activities.

26
27 **§802.63. Program Monitoring Activities**

28 Section 802.63 adds "AEL grant recipients" and "AEL service providers" as entities subject to
29 the provisions regarding program monitoring activities.

30
31 **§802.64. Fiscal Monitoring Activities**

32 Section 802.64(a) adds "AEL grant recipients" and "AEL service providers" as entities subject to
33 the provisions regarding fiscal monitoring activities.

34
35 **§802.65. Agency Monitoring Reports and Resolution**

36 Section 802.65 adds "AEL grant recipients" and "AEL service providers" as entities subject to
37 the provisions regarding Agency monitoring reports and resolution.

38
39 **§802.66. Access to Records**

40 Section 802.66 adds "AEL grant recipients" and "AEL service providers" as entities subject to
41 the provisions regarding access to records.

42
43 **SUBCHAPTER E. BOARD, WORKFORCE SERVICE PROVIDER, AND AEL GRANT**
44 **RECIPIENT MONITORING ACTIVITIES**

45 **The Commission proposes the following amendments to Subchapter E:**

1 **§802.81. Scope and Purpose**

2 Section 802.81 adds "AEL grant recipients" as entities subject to the provisions of Subchapter E,
3 regarding Board, workforce service provider, and AEL grant recipient monitoring activities.

4
5 **§802.82. Board, Workforce Service Provider, and AEL Grant Recipient Monitoring**

6 Section 802.82:

7 --replaces the title "Board and Workforce Service Provider Monitoring" with "Board, Workforce
8 Service Provider, and AEL Grant Recipient Monitoring" to reflect the addition of "AEL grant
9 recipients" as entities subject to the monitoring provisions; and

10 --adds "AEL grant recipients" and "AEL service providers" throughout the section as entities
11 subject to the monitoring provisions.

12
13 Section 802.82(b) adds "U.S. Department of Education Office of Vocational and Adult
14 Education guidance." AEL service providers' compliance with this guidance will be assessed by
15 monitoring activities.

16
17 **§802.83. Risk Assessment**

18 Section 802.83 adds "AEL grant recipients" and "AEL service providers" as entities subject to
19 the provisions regarding risk assessment.

20
21 **§802.84. Monitoring Plan**

22 Section 802.84 adds "AEL grant recipients" as entities subject to the provisions regarding
23 monitoring plans.

24
25 **§802.85. Controls over Monitoring**

26 Section 802.85 adds "AEL grant recipients," "AEL service providers," and "AEL consortium
27 members, as applicable" as entities subject to the provisions regarding controls over monitoring.

28
29 **§802.86. Reporting and Resolution Requirements**

30 Section 802.86 adds "AEL grant recipients," "AEL service providers," and "AEL consortium
31 members" as entities subject to the provisions regarding reporting and resolution requirements.

32
33 **§802.87. Independent Audit Requirements**

34 Section 802.87 adds "AEL grant recipients" and "AEL service providers" as entities subject to
35 the provisions regarding independent audit requirements.

36
37 Section 802.87(3) adds "OMB Circular A-21" as guidance to be followed by Boards, workforce
38 service providers, AEL grant recipients, AEL service providers, and Agency grantees.

39
40 Section 802.87(4) adds "OMB Circular A-110" as guidance to be followed by Boards, workforce
41 service providers, AEL grant recipients, AEL service providers, and Agency grantees.

42
43 Certain paragraphs in this section have been renumbered to accommodate additions.

1
2 **SUBCHAPTER F. PERFORMANCE AND ACCOUNTABILITY**

3 **The Commission proposes the following amendments to Subchapter F:**

4
5 **§802.101. Scope and Purpose**

6 Section 802.101 adds "AEL grant recipients" and "AEL service providers" as entities subject to
7 the provisions of the scope and purpose of Subchapter F, regarding performance and
8 accountability.

9
10 **§802.102. Performance Requirements and Expectations**

11 Section 802.102 adds "AEL grant recipients" as entities subject to the provisions regarding
12 performance requirements and expectations.

13
14 Section 802.102(c)(1) adds "U.S. Department of Education Office of Vocational and Adult
15 Education guidance" and "AEL Letters" as guidance that AEL grant recipients must comply
16 with.

17
18 **§802.103. Performance Review and Assistance**

19 Section 802.103 adds "AEL grant recipients" and "AEL service providers" as entities subject to
20 the provisions regarding performance review and assistance.

21
22 **§802.104. Performance Improvement Actions**

23 Section 802.104 adds "AEL grant recipients" and "AEL service providers" as entities subject to
24 the provisions regarding performance improvement actions.

25
26 **SUBCHAPTER G. CORRECTIVE ACTIONS**

27 **The Commission proposes the following amendments to Subchapter G:**

28
29 **§802.121. Imposition of Corrective Actions and Corrective Action Plans**

30 Section 802.121 adds "AEL grant recipients," "AEL service providers," "AEL grant recipient's
31 chief executive officer," and "AEL consortium members," as appropriate, as entities subject to
32 the provisions regarding imposition of corrective actions and corrective action plans.

33
34 Section 802.121(f)(19) removes the term "subrecipient of the Agency" and replaces it with
35 "Agency grantee," to conform with terminology changes made in a previous rulemaking.

36
37 **§802.122. Intent to Sanction**

38 Section 802.122 adds "AEL grant recipients" as entities subject to the provisions regarding intent
39 to sanction.

40
41 **§802.123. Sanctions**

42 Section 802.123 adds "AEL grant recipient" as an entity subject to the provisions regarding
43 sanctions.

1
2 **§802.124. Penalties for Noncompliance with Requirements**

3 Section 802.124 adds "AEL grant recipient" and "AEL service provider" as entities subject to the
4 provisions regarding penalties for noncompliance with requirements.
5

6 **§802.125. Sanction Determination**

7 Section 802.125 adds "AEL grant recipient" as an entity subject to the provisions regarding
8 sanction determination.
9

10 **SUBCHAPTER I. INCENTIVE AWARDS**

11 **The Commission proposes the following amendments to Subchapter I:**

12
13 **§802.161. Scope and Purpose**

14 Section 802.161 adds "AEL grant recipients" as entities subject to the provisions regarding the
15 scope and purpose of incentive awards.
16

17 **§802.162. Definitions**

18 Section 802.162(1) replaces the term "Board" with "workforce area" to clarify that the
19 Commission allocates funds to local workforce development areas.
20

21 **§802.164. Data Collection**

22 Section 802.164 adds "AEL grant recipients" as entities subject to the provisions regarding data
23 collection.
24

25 **New §802.169. AEL Incentive Awards**

26 New §802.169 sets forth the provisions for AEL incentive awards, as follows:
27

28 New §802.169(a)(1) - (3) provides that the Commission may issue monetary and nonmonetary
29 awards to AEL grant recipients, which may be awarded annually based on high-performance
30 achievement or continuous improvement in meeting performance measures:

31 --(1) The Commission may determine the amount of funds for use to reward performance
32 annually.

33 --(2) The Commission may use any combination of existing state or federal performance
34 measures and may develop its own measures to evaluate performance.

35 --(3) If the Commission includes a measure that does not already have a target, the Commission
36 may:

37 --(A) set an incentive target for the sole purpose of evaluating eligible AEL grant recipients
38 for the incentive awards (failure to meet an incentive target does not subject the AEL
39 grant recipients to sanction); or

40 --(B) rate performance based on each AEL grant recipient's "relative improvement" in
41 performance from the prior year.
42

43 New §802.169(b) states that the Commission may use a measure and a subset of a measure in the
44 same year.
45

1 New §802.169(c)(1) - (2) sets forth that if the Commission is considering issuing awards under
2 this section, the Commission shall notify AEL grant recipients of the method by which
3 performance shall be evaluated for the purpose of giving awards under this rule for that year.

4 --(1) The notice required under this subsection shall be provided to the AEL grant recipients
5 concurrent with their yearly contracts.

6 --(2) The notice may include:

7 --(A) a listing of awards;

8 --(B) a listing of the performance measures to be included in each evaluation category
9 including;

10 --(i) the period of evaluation for each performance measure;

11 --(ii) the method of evaluation for each performance measure;

12 --(C) the weightings to be used to aggregate the performance measures to allow each AEL
13 grant recipient's overall performance to be ranked;

14 --(D) the anticipated amount of funds available to be awarded; and

15 --(E) other criteria to be used to identify superior performance.

16
17 New §802.169(d) provides that AEL grant recipients that receive a performance award shall use
18 the incentive award to carry out AEL activities as allowed by state and federal laws.

19
20 New §802.169(e) states that the Commission may modify the assignment of awards based on
21 factors that the Commission identifies as extraordinary circumstances.

22 23 **PART III. IMPACT STATEMENTS**

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

26
27 There are no additional estimated costs to the state and local governments expected as a result of
28 enforcing or administering the rules.

29
30 There are no estimated cost reductions to the state and to local governments as a result of
31 enforcing or administering the rules.

32
33 There are no estimated losses or increases in revenue to the state or to local governments as a
34 result of enforcing or administering the rules.

35
36 There are no foreseeable implications relating to costs or revenue of the state or local
37 governments as a result of enforcing or administering the rules.

38
39 There are no anticipated economic costs to persons required to comply with the rules.

40
41 There is no anticipated adverse economic impact on small or microbusinesses as a result of
42 enforcing or administering the rules.

43 Economic Impact Statement and Regulatory Flexibility Analysis

44 The Agency has determined that the proposed rules will not have an adverse economic impact on
45 small businesses as these proposed rules place no requirements on small businesses.
46

1
2 Richard C. Froeschle, Director of Labor Market and Career Information, has determined that
3 there is no significant negative impact upon employment conditions in the state as a result of the
4 rules.

5
6 Reagan Miller, Director, Workforce Development Division, has determined that for each year of
7 the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the
8 proposed rules will be to provide for the effective administration of AEL services that are
9 aligned with other services provided through the workforce system.

10
11 The Agency hereby certifies that the proposal has been reviewed by legal counsel and found to
12 be within the Agency's legal authority to adopt.

13
14 **PART IV. COORDINATION ACTIVITIES**

15 In the development of these rules for publication and public comment, the Commission sought
16 the involvement of Texas' 28 Boards and AEL stakeholders. The Commission provided the
17 concept paper regarding these rule amendments to the Boards and AEL stakeholders for
18 consideration and review on September 11, 2013. The Commission also conducted a webinar on
19 September 19, 2013, to discuss the concept paper. During the rulemaking process, the
20 Commission considered all information gathered in order to develop rules that provide clear and
21 concise direction to all parties involved.

22
23 Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce
24 Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin,
25 Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us.
26 The Commission must receive comments postmarked no later than 30 days from the date this
27 proposal is published in the *Texas Register*.

28
29 The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the
30 Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it
31 deems necessary for the effective administration of Agency services and activities.

32
33 The rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.
34
35
36
37

1 **CHAPTER 802. INTEGRITY OF THE TEXAS WORKFORCE SYSTEM**

2
3 **SUBCHAPTER A. PURPOSE AND GENERAL PROVISIONS**

4
5 **§802.1. Purpose and General Provisions.**

- 6
7 (a) The purpose of the rules contained in this subchapter is to implement Texas
8 Government Code, §2308.264 and §2308.267, including provisions relating to
9 directly delivering services, Local Workforce Development Board (Board)
10 contracting guidelines, and other conflict of interest provisions, and to implement
11 Texas Labor Code, Chapter 315, regarding Adult Education and Literacy (AEL)
12 programs.
- 13
14 (b) It is the intent of the Commission that these rules strengthen the confidence of the
15 public in the Texas workforce system.
- 16
17 (c) A Board may set local policies that are more restrictive than those set forth in this
18 subchapter.
- 19
20 (d) A Board shall develop the policies and procedures required by this subchapter.
- 21
22 (e) A Board member with an existing contract for workforce services shall comply with
23 this subchapter no later than the earliest of the following:
- 24 (1) the expiration of the contract;
- 25
26 (2) the contract renewal date; or
- 27
28 (3) the expiration of the Board member's term or the Board member's resignation.
- 29
30 (f) Pursuant to Texas Government Code, Chapter 551 (Open Meetings Act), a Board
31 shall:
- 32 (1) post appropriate notice;
- 33
34 (2) ensure that all public business or public policy over which the Board has
35 supervision or control is discussed, considered, or acted upon during a properly
36 posted and convened open meeting; and
- 37
38 (3) prepare and retain minutes or tape recordings of each open meeting of the
39 Board. The minutes shall:
- 40 (A) state the subject of each deliberation; and
- 41
42
43

1
2 (B) indicate each vote, order, decision, or other action taken.
3

4 **SUBCHAPTER D. AGENCY MONITORING ACTIVITIES**
5

6 **§802.61. Purpose.**
7

- 8 (a) The purpose of this subchapter is to set forth the Agency's monitoring provisions and
9 respective responsibilities of Boards, workforce service providers, [AEL grant](#)
10 [recipients](#), [AEL service providers](#), and Agency grantees.
11
12 (b) The rules contained in this subchapter apply in addition to any program-specific rules
13 to all programs administered by the Agency, except that to the extent of any conflict,
14 the program-specific rules will govern.
15

16 **§802.62. Program and Fiscal Monitoring.**
17

- 18 (a) Boards, workforce service providers, [AEL grant recipients](#), [AEL service providers](#),
19 and Agency grantees shall cooperate with the Agency's program and fiscal
20 monitoring activities, site visits, reviews of documentation, and requests for
21 information. The Agency is committed to ensuring the accountability of Boards,
22 workforce service providers, [AEL grant recipients](#), [AEL service providers](#), and
23 Agency grantees. Therefore, monitoring activities have been developed to:
24
25 (1) ensure programs achieve intended results;
26
27 (2) ensure resources are efficiently and effectively used for authorized purposes
28 and are protected from waste, fraud, and abuse; and
29
30 (3) ensure reliable and timely information is captured and reported to serve as the
31 basis to improve decision-making.
32
33 (b) The Agency shall conduct comprehensive monitoring activities to assess the
34 following for Boards, workforce service providers, [AEL grant recipients](#), [AEL](#)
35 [service providers](#), and Agency grantees:
36
37 (1) Progress in achieving program goals and maintaining fiscal accountability.
38 Program and fiscal monitoring activities include site visits, desk reviews, and
39 analyses of both financial and program outcomes to help identify potential
40 weaknesses before such weaknesses result in substandard performance or
41 questioned costs;
42
43 (2) Compliance with applicable laws, regulations, provisions of contracts and
44 Board plans, and official directives and circulars including, but not limited to,
45 U.S. Department of Labor (DOL) Training and Employment Guidance Letters,
46 DOL Training and Employment Notices, U.S. Department of Health and

1 Human Services guidance letters, [U.S. Department of Education, Office of](#)
2 [Vocational and Adult Education guidance](#), Commission rules contained in Part
3 20 of this title (relating to the Texas Workforce Commission), Texas
4 Workforce Commission Workforce Development (WD) Letters [and AEL](#)
5 [Letters](#), the Agency's Financial Manual for Grants and Contracts, and other
6 Agency guidance; and
7

8 (3) Compliance with the appropriate uniform administrative requirements for
9 grants and agreements applicable to the type of entity receiving funds, as
10 promulgated in the OMB circulars or rules. Monitoring activities shall
11 encompass both financial and programmatic monitoring and shall be evaluated
12 on a periodic basis. Monitoring reviews result in recommendations that
13 provide practical solutions used to take immediate corrective action.
14

15 (c) Boards, workforce service providers, [AEL grant recipients, AEL service providers,](#)
16 and Agency grantees are subject to audit and review by the Agency. The Agency
17 may audit and review all relevant records or a sample of the records as needed to
18 determine Board, workforce service provider, [AEL grant recipient, AEL service](#)
19 [provider](#), and Agency grantee performance.
20

21 (d) Failure to comply with this subchapter shall result in corrective action and possible
22 sanctions pursuant to Subchapter G of this chapter (relating to Corrective Actions).
23

24 **§802.63. Program Monitoring Activities.**

25

26 The Agency shall conduct program monitoring activities to ensure that programs achieve
27 intended results. Processes and procedures used to determine Board, workforce service
28 provider, [AEL grant recipient, AEL service provider](#), and Agency grantee performance
29 may include review and evaluation of one or more of the following:
30

- 31 (1) Program results or outcomes
- 32
- 33 (2) Performance measures
- 34
- 35 (3) Reporting accuracy
- 36
- 37 (4) Record keeping and file maintenance
- 38
- 39 (5) Monitoring functions
- 40
- 41 (6) Self-monitoring activities
- 42
- 43 (7) Service delivery
- 44
- 45 (8) Automated systems and reporting
- 46

1 (9) Human resources

2
3 (10) Policies and procedures

4
5 **§802.64. Fiscal Monitoring Activities.**

6
7 (a) The Agency shall conduct fiscal monitoring activities to ensure that resources are
8 efficiently and effectively used for authorized purposes and are protected from
9 waste, fraud, and abuse. Processes and procedures used to determine Board,
10 workforce service provider, [AEL grant recipient](#), [AEL service provider](#), and Agency
11 grantee performance may include the review and evaluation of one or more of the
12 following:

13
14 (1) Accounting and reporting systems

15
16 (2) Budget methodologies

17
18 (3) Cash management practices

19
20 (4) Cost allocation plans and processes

21
22 (5) Cash disbursement compliance and documentation

23
24 (6) Program income identification and reporting

25
26 (7) Insurance coverage and risk exposure

27
28 (8) Oversight and monitoring functions

29
30 (9) Payroll administration

31
32 (10) Purchasing and procurement processes and procedures

33
34 (11) Property accountability and safeguarding

35
36 (b) Processes and procedures used to determine Board, workforce service provider, [AEL](#)
37 [grant recipient](#), [AEL service provider](#), and Agency grantee performance shall include
38 a review, evaluation, and determination regarding compliance with the appropriate
39 uniform administrative requirements for grants and agreements as well as the
40 appropriate cost principles applicable for the type of entity receiving funds as listed
41 in OMB circulars or rules.

- 1
2 (c) Processes and procedures used to determine Board, workforce service provider, [AEL](#)
3 [grant recipient](#), [AEL service provider](#), and Agency grantee performance shall include
4 a review, evaluation, and determination regarding compliance with the applicable
5 requirements regarding cost categories and cost limitations.
6

7 **§802.65. Agency Monitoring Reports and Resolution.**
8

- 9 (a) Monitoring Reports. The Agency's monitoring department shall issue the following
10 monitoring reports summarizing the results of monitoring activities. The reports
11 may include the observations, findings, and recommendations of the monitoring
12 team and Board, workforce service provider, [AEL grant recipient](#), [AEL service](#)
13 [provider](#), or Agency grantee responses to the observations, findings, and
14 recommendations.
15

16 (1) Management Letter. If there are no findings (i.e., administrative findings
17 and/or questioned costs), a management letter is issued.
18

19 (2) Draft Monitoring Report. If there are findings, a draft monitoring report is
20 issued, which sets forth a specified period in which to respond.
21

22 (3) Final Monitoring Report. A final monitoring report is issued, which may
23 include responses to the findings and recommendations.
24

- 25 (b) Initial Resolution. Based on the final monitoring report, the Agency's audit
26 resolution department shall issue an initial resolution, which notifies a Board,
27 workforce service provider, [AEL grant recipient](#), [AEL service provider](#), or Agency
28 grantee of administrative findings and questioned costs and a specific time period for
29 response.
30

31 (1) Administrative Findings.
32

33 (A) If the administrative findings set forth in the initial resolution are
34 resolved, a closure letter is issued.
35

36 (B) If the administrative findings set forth in the initial resolution are not
37 resolved, the findings remain open until the following year's audit to
38 ensure follow-up.
39

40 (2) Questioned Costs.
41

42 (A) If the questioned costs set forth in the initial resolution are resolved, a
43 closure letter is issued.
44

45 (B) If the questioned costs set forth in the initial resolution are not resolved,
46 an initial determination is issued.

1
2 (c) Initial Determination. The Agency's audit resolution department shall issue an initial
3 determination notifying a Board, workforce service provider, [AEL grant recipient](#),
4 [AEL service provider](#), or Agency grantee of the following:

5
6 (1) The unresolved questioned costs; and

7
8 (2) The 60-day period, from issuance of the initial determination, to submit a
9 response, including providing evidence or documentation of the appropriate
10 actions taken.

11
12 (d) Final Determination. If the questioned costs remain unresolved at the end of the 60-
13 day period, the Agency's audit resolution department shall issue a final determination
14 to notify a Board, workforce service provider, [AEL grant recipient](#), [AEL service](#)
15 [provider](#), or Agency grantee of allowed or disallowed costs and to establish debts.

16
17 (e) If the administrative findings or questioned costs remain unresolved, the Agency's
18 Regulatory Integrity Division may request a sanction, as set forth in §802.125 of this
19 chapter (relating to Sanction Determination).

20
21 (f) Appeal Process

22
23 (1) Only final determinations regarding questioned costs issued by the Agency
24 may be appealed, pursuant to §802.142 of this chapter (relating to Appeal).

25
26 (2) Failure by a Board, workforce service provider, [AEL grant recipient](#), [AEL](#)
27 [service provider](#), or Agency grantee to timely request a hearing waives the
28 right to a hearing. The final determination shall constitute final Agency action
29 and is not subject to further review.

30
31 (3) If an appeal is requested and approved, a hearing officer is designated and the
32 collection of debt is pending until final decision of the hearing.

33
34 **§802.66. Access to Records.**

35
36 (a) Right of Access

37
38 (1) Agency. All books, documents, papers, computer records, or other records
39 prepared by Boards, workforce service providers, [AEL grant recipients](#), [AEL](#)
40 [service providers](#), or Agency grantees that are pertinent to the use of any funds
41 administered by the Agency are Agency property. Boards, workforce service
42 providers, [AEL grant recipients](#), [AEL service providers](#), or Agency grantees in
43 possession of such records shall be responsible for their secure and proper
44 maintenance. The Agency or its authorized representatives have the right of
45 timely and unrestricted access to any such records in order to conduct

1 monitoring, audits, and examinations, and to make excerpts, transcripts, and
2 photocopies of such documents.

3
4 (2) Board, [AEL grant recipient](#), or Agency grantee. A Board or its authorized
5 representatives, [AEL grant recipient or its authorized representative](#), and an
6 Agency grantee or its executive leadership, have the right of timely and
7 unrestricted access to any books, documents, papers, computer records, or
8 other records of workforce service providers [or AEL service providers](#), that are
9 pertinent to the use of any funds administered by the Agency, in order to
10 conduct monitoring, audits, and examinations; and to make excerpts,
11 transcripts, and photocopies of such documents.

12
13 (b) The right of access also includes timely and unrestricted access to Board, workforce
14 service provider, [AEL grant recipient](#), [AEL service provider](#), and Agency grantee
15 personnel for the purpose of interviews and discussions related to such documents.

16
17 (c) The right of access is not limited to any required record retention period but shall last
18 as long as the records are retained.

19
20 (d) When a Board's [or AEL grant recipient's](#) relationship with the workforce service
21 provider [or AEL service provider](#) is terminated, the Board's [or AEL grant recipient's](#)
22 responsibility for maintenance and retention of records as well as the Agency's right
23 to access does not end.

24
25 (e) Custody of Records.

26
27 (1) The Agency, ~~or the Board~~, [or AEL grant recipient](#) may request custody of
28 records if ~~one~~~~either~~ determines that:

29
30 (A) the records possess long-term retention value; or

31
32 (B) the workforce service provider [or AEL service provider](#) is unable or
33 unwilling to physically retain them.

34
35 (2) The Agency may request custody of records from an Agency grantee if the
36 Agency determines that:

37
38 (A) the records possess long-term retention value; or

39
40 (B) the Agency grantee is unable or unwilling to physically retain them.

41
42 (f) To comply with single audit requirements:

43
44 (1) the workforce service provider [or AEL service provider](#) shall retain the right of
45 access to records in the custody of the Agency or the Board; and

- 1
2 (2) the Agency grantee shall retain the right of access to records in the custody of
3 the Agency.
4

5 **SUBCHAPTER E. BOARD, ~~AND~~ WORKFORCE SERVICE PROVIDER, AND AEL**
6 **GRANT RECIPIENT MONITORING ACTIVITIES**
7

8 **§802.81. Scope and Purpose.**
9

- 10 (a) The purpose of this subchapter is to set forth the provisions governing the
11 monitoring responsibilities of Boards, ~~and~~ workforce service providers, and AEL
12 grant recipients.
13
14 (b) The rules contained in this subchapter apply in addition to any program-specific
15 rules to all programs administered by the Agency, except that to the extent of any
16 conflict, the program-specific rule will govern.
17

18 **§802.82. Board ~~and~~, Workforce Service Provider, and AEL Grant Recipient**
19 **Monitoring.**
20

- 21 (a) Boards, ~~and~~ workforce service providers, and AEL grant recipients shall ensure that
22 regular oversight of their own activities and regular monitoring of the activities of
23 their workforce service providers and AEL service providers that receive public
24 funds administered by the Agency, are conducted and completed. Monitoring shall
25 include monitoring of both the fiscal and program performance of the workforce
26 service providers and AEL service providers administering and delivering services.
27 These monitoring activities shall be designed to ensure programs achieve intended
28 results and resources are efficiently and effectively used for authorized purposes and
29 are protected from waste, fraud, and abuse. Monitoring activities shall be planned to
30 focus on areas of highest risk to help ensure the most effective use of monitoring
31 resources.
32
33 (b) Monitoring activities shall assess a workforce service provider's and AEL service
34 provider's compliance with applicable laws, regulations, provisions of contracts and
35 Board plans, and official directives and circulars including, but not limited to, DOL
36 Training and Employment Guidance Letters, DOL Training and Employment
37 Notices, U.S. Department of Health and Human Services guidance letters, U.S.
38 Department of Education Office of Vocational and Adult Education guidance,
39 Commission rules contained in Part 20 of this title, Texas Workforce Commission
40 WD Letters and AEL Letters, the Agency's Financial Manual for Grants and
41 Contracts, and other Agency guidance. The Board and AEL grant recipient shall
42 assess the workforce service provider's and AEL service provider's compliance with
43 the appropriate uniform administrative requirements for grants and agreements
44 applicable to the type of entity receiving funds, as promulgated in OMB circulars or
45 rules. These activities shall encompass both financial and programmatic monitoring
46 and shall be evaluated on a periodic basis. Each Board, ~~and~~ workforce service

1 provider, and AEL grant recipient shall conduct regular oversight and monitoring of
2 its workforce service providers or AEL service providers in order to:

- 3
4 (1) determine that expenditures have been charged to the cost categories and
5 within the cost limitations specified in the applicable laws and regulations;
6
7 (2) determine whether or not there is compliance with other provisions of
8 applicable laws and regulations; and
9
10 (3) provide technical assistance as necessary and appropriate.

11
12 (c) The monitoring function shall include the development and implementation of:

- 13
14 (1) a risk assessment tool;
15
16 (2) a monitoring plan;
17
18 (3) a monitoring program, including established policies and procedures; and
19
20 (4) reporting and resolution processes.

21
22 (d) The Board and workforce service provider, or the AEL grant recipient and AEL
23 service provider, shall develop and implement written policies and procedures that
24 describe and support the monitoring process.
25

26 **§802.83. Risk Assessment.**
27

- 28 (a) Boards, ~~and~~ workforce service providers, and AEL grant recipients shall include the
29 use of a risk assessment tool in their monitoring functions.
30
31 (b) The risk assessment tool shall identify high-risk workforce service providers and
32 AEL service providers and high areas of risk within an individual workforce service
33 provider's or AEL service provider's operation. The entity responsible for including
34 the risk assessment tool in its ~~their~~ monitoring functions shall be responsible for
35 determining what constitutes high risk or an area of high risk.
36
37 (c) Boards, ~~and~~ workforce service providers, and AEL grant recipients shall establish
38 monitoring schedules and monitoring programs that best use monitoring resources.
39 Boards, ~~and~~ workforce service providers, and AEL grant recipients shall quantify, as
40 much as possible, and document areas of risk identified for assessment.
41

42 **§802.84. Monitoring Plan.**
43

- 44 (a) Boards, ~~and~~ workforce service providers, and AEL grant recipients shall develop
45 their own local-level monitoring plan based on the results of the risk assessment.
46 This monitoring plan shall incorporate the following:

- 1
2 (1) a schedule or timetable for monitoring Agency-funded activities; and
3
4 (2) identification of the type of review planned, such as on-site review,
5 comparative financial analysis, desk review, staff analysis, or other type of
6 appropriate review.
7
8 (b) Boards, ~~and~~ workforce service providers, and AEL grant recipients may perform
9 monitoring reviews either formally or informally, but shall incorporate the risk
10 assessment results in scheduling decisions.
11

12 **§802.85. Controls over Monitoring.**
13

14 To ensure comprehensive and effective monitoring, Boards, ~~and~~ workforce service
15 providers, and AEL grant recipients shall:
16

- 17 (1) require periodic reports from their workforce service providers or AEL service
18 providers outlining monitoring reviews, noncompliance issues, and the status
19 of corrective actions;
20
21 (2) ensure that a briefing regarding monitoring activities and findings is provided
22 to the Board or appropriate Board subcommittee at regularly scheduled
23 meetings, or to AEL consortium members, as applicable;
24
25 (3) require an annual evaluation of the monitoring function to determine its
26 effectiveness, by a person or entity independent of the monitoring function;
27 and
28
29 (4) develop a written monitoring procedure to be used in monitoring both program
30 and fiscal operations.
31

32 **§802.86. Reporting and Resolution Requirements.**
33

- 34 (a) Boards, ~~and~~ workforce service providers, and AEL grant recipients shall ensure that
35 monitoring reports identify instances of noncompliance with federal and state laws
36 and regulations and Agency policies, and provide recommendations for corrective
37 action and program quality enhancements.
38
39 (b) Boards, ~~and~~ workforce service providers, and AEL grant recipients shall ensure that
40 timelines are established for the completion of corrective actions, based on the
41 severity of the deficiency, and shall work with the workforce service providers or
42 AEL service providers to ensure implementation of corrective actions.

- 1
2 (c) Boards, ~~and~~ workforce service providers, and AEL grant recipients shall ensure that
3 a copy of monitoring reports is provided to Board members or AEL consortium
4 members.
5

6 **§802.87. Independent Audit Requirements.**
7

8 Boards, workforce service providers, AEL grant recipients, AEL service providers, and
9 Agency grantees are subject to the following and shall ensure that an annual audit or
10 program-specific audit is obtained in accordance with the following:
11

- 12 (1) Single Audit Act Amendments of 1996 (Public Law 104-156);
13
14 (2) OMB Circular A-133 and Compliance Supplement;
15
16 (3) OMB Circular A-21;
17
18 (4) OMB Circular A-110;
19
20 (5)(3) *Government Auditing Standards* (U.S. Government Accountability Office);
21 and
22
23 (6)(4) State of Texas Single Audit Circular within the Uniform Grant Management
24 Standards Act (Texas Government Code, Chapter 783).
25

26 **SUBCHAPTER F. PERFORMANCE AND ACCOUNTABILITY**
27

28 **§802.101. Scope and Purpose.**
29

- 30 (a) The purpose of this subchapter is to:
31
32 (1) ensure accountability of Boards, workforce service providers, AEL grant
33 recipients, AEL service providers, and Agency grantees, in meeting the needs
34 of Workforce Solutions customers;
35
36 (2) ensure performance targets are met or exceeded; and
37
38 (3) describe the Commission policies for noncompliance.
39
40 (b) The Agency may review financial, administrative, and performance data to evaluate
41 a Board, workforce service provider, AEL grant recipient, AEL service provider, or
42 Agency grantee to determine the need for sanctions.
43
44 (c) To accomplish the purposes of this subchapter, the Agency may require at any point
45 during the year that a Board, workforce service provider, AEL grant recipient, AEL
46 service provider, or Agency grantee cooperates with remedial actions, including, but

1 not limited to, entering into a technical assistance plan and other performance review
2 and assistance activities.

3
4 **§802.102. Performance Requirements and Expectations.**
5

- 6 (a) A Board [or AEL grant recipient](#) shall meet or exceed expenditure and performance
7 targets as set forth in its contracts. The Commission shall determine the Boards' [or](#)
8 [AEL grant recipients'](#) performance targets based on federal and state performance
9 standards and by using factors that may be necessary to achieve the mission of the
10 Commission and reflect local conditions. The Commission approves individual
11 Board [or AEL grant recipient](#) performance targets annually, which may be adjusted
12 based on local conditions including, but not limited to, specific economic conditions
13 and demographic characteristics of the workforce area.
14
- 15 (b) An Agency grantee shall meet or exceed expenditure and performance targets as set
16 forth in its contracts.
17
- 18 (c) A Board, [AEL grant recipient](#), and Agency grantee shall comply with the following:
19
- 20 (1) applicable laws, regulations, provisions of contracts and Board plans, and
21 official directives and circulars including, but not limited to, DOL Training and
22 Employment Guidance Letters, DOL Training and Employment Notices, U.S.
23 Department of Health and Human Services guidance letters, [U.S. Department](#)
24 [of Education Office of Vocational and Adult Education guidance](#), Commission
25 rules contained in Part 20 of this title, Texas Workforce Commission
26 ~~Workforce~~WD Letters [and AEL Letters](#), the Agency's Financial Manual for
27 Grants and Contracts, and other Agency guidance;
28
- 29 (2) appropriate uniform administrative requirements for grants and agreements
30 applicable for the type of entity receiving funds as promulgated in OMB's
31 Uniform Grant Management Standards circulars or rules; and
32
- 33 (3) Agency-Board agreements and applicable program contracts.
34
- 35 (d) A Board's [or AEL grant recipient's](#) achievement of high levels of performance may
36 result in the Commission providing incentives for the Board as set forth in
37 Subchapter I of this chapter (relating to Incentive Awards). In addition, the
38 Commission may adopt additional performance incentives.
39
- 40 (e) The failure of Boards, [AEL grant recipients](#), or Agency grantees to meet minimum
41 levels of performance as referenced in their contracts may result in corrective
42 actions, other performance review and assistance activities, or sanctions as specified
43 in:
44
- 45 (1) Part 20 of this title, including this chapter;
46

1 (2) the contract with the Agency; or

2
3 (3) federal or state statute or rule.

4
5 (f) A Board or AEL grant recipient may submit to the Commission a request for a
6 performance target adjustment in the format prescribed by the Agency.

7
8 (g) The Commission may determine what constitutes a necessary adjustment to local
9 performance targets and may consider specific economic conditions and
10 demographic characteristics to be served in the workforce area and other factors the
11 Commission deems appropriate including the anticipated impact of the adjustment
12 on the state's performance.

13
14 **§802.103. Performance Review and Assistance.**

15
16 (a) The Commission's intent is to define the role of performance review and assistance
17 provided by the Agency. The role of performance review and assistance is to work
18 with Boards, workforce service providers, AEL grant recipients, AEL service
19 providers, and Agency grantees to:

20
21 (1) ensure successful service delivery outcomes; and

22
23 (2) provide accountability through technical assistance and contract management.

24
25 (b) The Agency offers a sequence of interventions including the development of
26 technical assistance plans, on-site reviews, staff training, and continued contract
27 management and oversight.

28
29 (c) Boards, workforce service providers, AEL grant recipients, AEL service providers,
30 and Agency grantees shall ensure cooperation and compliance with the Agency's
31 performance review and assistance activities and services.

32
33 **§802.104. Performance Improvement Actions.**

34
35 (a) The Agency may assist Boards, workforce service providers, AEL grant recipients,
36 AEL service providers, and Agency grantees with strategies for improving
37 compliance or performance.

38
39 (b) A technical assistance plan, which may be jointly developed by the Agency with
40 Boards, AEL grant recipients, or Agency grantees, may include, but is not limited to:

41
42 (1) identification of one or more specific performance improvement issues;

43
44 (2) assessment of specific technical assistance or training needs;

- 1 (3) selection of one or more specific technical assistance or training activities to be
2 implemented;
- 3
- 4 (4) identification of the appropriate entities to provide the technical assistance or
5 training, including the Board, [AEL grant recipient](#), the Agency, other Boards,
6 or other entities;
- 7
- 8 (5) identification of a timeline for completion of the technical assistance or
9 training; and
- 10
- 11 (6) specific dates for reassessment of technical assistance or training needs and
12 completion of the specific technical assistance or training.
- 13

14 **SUBCHAPTER G. CORRECTIVE ACTIONS**

15 **§802.121. Imposition of Corrective Actions and Corrective Action Plans.**

- 16
- 17
- 18 (a) At any time, the Agency may impose corrective actions for failure by a Board, [AEL](#)
19 [grant recipient](#), or Agency grantee to ensure compliance with the following:
 - 20
 - 21 (1) one or more contracted performance measures;
 - 22
 - 23 (2) one or more contract provisions; or
 - 24
 - 25 (3) one or more of the items listed in §802.102(c) of this chapter.
 - 26
- 27 (b) The Agency may impose corrective actions for failure by a Board, [AEL grant](#)
28 [recipient](#), or Agency grantee to appropriately oversee of the delivery of services and
29 ensure the effective and efficient use of funds.
- 30
- 31 (c) Failure to cooperate and comply with the Agency's performance improvement
32 actions, including technical assistance plans, may subject a Board, [AEL grant](#)
33 [recipient](#), or Agency grantee to corrective actions.
- 34
- 35 (d) The Agency may impose, in nonsequential order, the following corrective actions on
36 a Board, [AEL grant recipient](#), or Agency grantee:
 - 37
 - 38 (1) Intent to Sanction
 - 39
 - 40 (2) Level-One Sanction
 - 41
 - 42 (3) Level-Two Sanction
 - 43
 - 44 (4) Level-Three Sanction
 - 45

- 1 (e) The Agency may impose a higher level of sanction on a Board, [AEL grant recipient](#),
2 or Agency grantee, if a sanction is currently imposed when another sanctionable act
3 occurs or is discovered.
4
- 5 (f) Corrective Action Plan. To assist in correcting any deficiencies, a Board, [AEL grant](#)
6 [recipient](#), or Agency grantee upon whom an intent to sanction or a sanction is
7 imposed must enter into a corrective action plan. A corrective action plan is
8 developed by the Agency and may include the elements of a technical assistance
9 plan, as outlined in §802.104(b) of this chapter. In addition, the Agency may
10 require:
11
- 12 (1) participation in technical and quality assurance activities;
 - 13
 - 14 (2) mandatory participation in training;
 - 15
 - 16 (3) on-site visits by the Agency to oversee and assist with daily operations of a
17 Board, [AEL grant recipient](#), or Agency grantee;
 - 18
 - 19 (4) submission of additional or more detailed financial or performance reports;
 - 20
 - 21 (5) modification of the Board's local plan;
 - 22
 - 23 (6) issuing a notice of intent to revoke all or part of the affected local plan;
 - 24
 - 25 (7) designation as a high-risk Board, [AEL grant recipient](#), or an Agency grantee
26 requiring additional monitoring visits;
 - 27
 - 28 (8) appearances by the Board's executive director, other administrative officer, ~~or~~
29 the Agency grantee's executive leadership, [or the AEL grant recipient's chief](#)
30 [executive officer](#) to report on activities and progress in Commission meetings
31 until performance is satisfactory;
 - 32
 - 33 (9) meetings with the workforce area's chief elected officials, Board chair, Board
34 members, Board executive director, [AEL grant recipient's chief executive](#)
35 [officer, AEL consortium members](#), or Agency grantee's executive leadership;
 - 36
 - 37 (10) formal Agency presentation to chief elected officials, Board members, [AEL](#)
38 [grant recipient's chief executive officer, AEL consortium members](#), or Agency
39 grantee's executive leadership;
 - 40
 - 41 (11) Agency oversight and management of problem situations, such as the
42 appointment of a steward;
 - 43
 - 44 (12) Agency approval of specified Board, [AEL grant recipient](#), or Agency grantee
45 actions (i.e., prohibition against entering into specific contracts or engaging in
46 certain activities without explicit prior approval of the Agency);

- 1
- 2 (13) prohibition against a Board or AEL grant recipient using designated workforce
- 3 service providers or AEL service providers, including state agencies and
- 4 Workforce Solutions Office operators;
- 5
- 6 (14) payment by reimbursement only, with required supporting documentation;
- 7
- 8 (15) delay, suspension, or denial of contract payments;
- 9
- 10 (16) reduction or deobligation of funds;
- 11
- 12 (17) ineligibility for additional discretionary or other funds, including incentive
- 13 awards;
- 14
- 15 (18) contract cancellation or termination; and
- 16
- 17 (19) other actions deemed appropriate by the Agency to assist the Board, AEL grant
- 18 recipient, or Agency grantee ~~subrecipient of the Agency~~ in correcting
- 19 deficiencies.
- 20

21 **§802.122. Intent to Sanction.**

- 22
- 23 (a) The Agency may issue an intent to sanction to set forth:
- 24
- 25 (1) a corrective action plan and performance review and assistance activities;
- 26
- 27 (2) a specific timeline for the implementation of the corrective action plan by a
- 28 Board, AEL grant recipient, or Agency grantee; and
- 29
- 30 (3) an opportunity to cure the sanctionable acts.
- 31
- 32 (b) There shall be no appeal to an intent to sanction.
- 33

34 **§802.123. Sanctions.**

- 35
- 36 (a) Level-One Sanction. The Agency may impose a level-one sanction on a Board, AEL
- 37 grant recipient, or Agency grantee for sanctionable acts. Sanctionable acts that occur
- 38 during the program, grant, fiscal, contract, or calendar year include, but are not
- 39 limited to, the following:
- 40
- 41 (1) failure to submit timely and accurate required financial or performance reports;
- 42
- 43 (2) failure to take corrective actions to resolve findings identified during
- 44 monitoring, investigative, or program reviews, including failure to comply
- 45 with a technical assistance plan developed by the Agency;
- 46

- (3) failure to rectify or resolve all independent audit findings or questioned costs within required time frames;
- (4) failure to submit required annual audits;
- (5) breach of administrative and service contract requirements;
- (6) failure to retain required service delivery and financial records; or
- (7) failure to meet the target on any contracted performance measure by more than 10 percent of target.

(b) Level-Two Sanction. The Agency may impose a level-two sanction on a Board, [AEL grant recipient](#), or Agency grantee for sanctionable acts. Sanctionable acts that occur during the program, grant, fiscal, contract, or calendar year include, but are not limited to, the following:

- (1) failure to rectify a level-one sanction within six months of notice;
- (2) committing a second sanctionable act;
- (3) failure to rectify reported threats to health and safety of program participants within 30 days of notice. Rectifying health and safety may include investigating a complaint, taking appropriate corrective actions, or making referrals to appropriate authorities; or
- (4) failure to meet the target on any contracted performance measure by more than 25 percent of target.

(c) Level-Three Sanction. The Agency may impose a level-three sanction on a Board, [AEL grant recipient](#), or Agency grantee for sanctionable acts. Sanctionable acts that occur during the program, grant, fiscal, contract, or calendar year include, but are not limited to, the following:

- (1) failure to rectify a level-one sanction within one year of notice;
- (2) failure to rectify a level-two sanction within six months of notice;
- (3) committing multiple sanctionable acts;
- (4) failure to rectify reported threats to health and safety of program participants within 60 days of notice. Rectifying health and safety may include investigating a complaint, taking appropriate corrective action, or making referrals to appropriate authorities; or

- 1
2 (5) failure to meet the target on any contracted measure by more than 25 percent
3 of target for two consecutive years.
4

5 **§802.124. Penalties for Noncompliance with Requirements.**
6

- 7 (a) The Agency may impose penalties on a Board, [AEL grant recipient](#), or Agency
8 grantee based on the following criteria as determined appropriate by the Agency
9 given the totality of the circumstances surrounding the occurrence of the
10 sanctionable act or acts:
11
12 (1) Severity, nature, duration, and extent;
13
14 (2) Previous occurrences of sanctionable acts; and
15
16 (3) Efforts by the Board, workforce service provider, [AEL grant recipient](#), [AEL](#)
17 [service provider](#), or Agency grantee to prevent the occurrence of the
18 sanctionable act, including efforts to:
19
20 (A) obtain technical assistance, training, or other assistance from the Agency;
21
22 (B) resolve monitoring findings; and
23
24 (C) prevent potential sanctionable acts.
25
26 (b) The Agency may impose penalties for sanctionable acts listed in this subchapter.
27 Notwithstanding the list of sanctionable acts appearing after each specific level of
28 sanction in §802.123 of this subchapter, the Agency may assign a higher or lower
29 sanction level based on the severity or mitigating circumstances surrounding the
30 sanctionable acts.
31
32 (c) The Commission may recommend to TWIC pursuant to Texas Government Code,
33 Chapter 2308, that one or more of the following be imposed on Boards:
34
35 (1) A reorganization plan under Texas Government Code §2308.268 for the
36 workforce area;
37
38 (2) A restructuring of the Board, including decertification of the current Board and
39 appointment and certification of a new Board;
40
41 (3) A merger of the workforce area into one or more other workforce areas; or
42
43 (4) Any other penalty deemed appropriate by the Commission.
44
45 (d) More than one corrective action may be imposed in response to one occurrence of a
46 sanctionable act. The corrective actions imposed for one or more occurrences of

1 sanctionable acts may correlate with the sanction level imposed on a Board, [AEL](#)
2 [grant recipient](#), or Agency grantee.

- 3
- 4 (e) [Failure by a Board, AEL grant recipient, or Agency grantee](#) ~~A Board's or Agency~~
5 ~~grantee's failure~~ to complete the corrective actions described in this subchapter
6 within the specified time limits may result in the Agency imposing penalties under
7 this subchapter and withholding contract payments to the Board, [AEL grant](#)
8 [recipient](#), or Agency grantee.
- 9
- 10 (f) Penalties for Second-Year WIA Nonperformance. If a Board fails to meet its targets
11 on 25 percent of its contracted measures by more than 20 percent of target for two
12 consecutive program years, the Commission shall review the performance
13 deficiencies and shall make a recommendation to TWIC that it impose a
14 reorganization plan for the workforce area. The Commission's recommendation to
15 TWIC for reorganization of a workforce area may include one or more of the
16 corrective actions or penalties included in this subchapter. Notwithstanding this
17 subsection, the Commission may take other action deemed appropriate as consistent
18 with federal law.
- 19
- 20 (g) Penalties for Failures Regarding the One-Stop Service Delivery Network. Failure of
21 a Board to ensure the continued operation of a one-stop service delivery network as
22 required by WIA §121 and Chapter 801, Subchapter B, One-Stop Service Delivery
23 Network of this title, including failure to properly certify Workforce Solutions
24 Offices as defined in §801.24 of this title, may result in the imposition of penalties as
25 provided in this subchapter, and the Agency's withholding of payment for any
26 administrative expenses until the Board demonstrates to the satisfaction of the
27 Agency that all of the required elements of a one-stop service delivery network are
28 operational.

29

30 **§802.125. Sanction Determination.**

- 31
- 32 (a) The director of Agency's Workforce Development Division determines whether a
33 sanction shall be imposed, including whether it is appropriate to impose a sanction
34 level on the Board, [AEL grant recipient](#), or Agency grantee and whether it is
35 appropriate to assign a penalty.
- 36
- 37 (b) The Commission shall work in concert with TWIC, as appropriate, to impose
38 sanctions as required by Texas Government Code §2308.268 and §2308.269.
- 39
- 40 (c) The Agency shall send a written notice of sanction determination (sanction
41 determination) to the following:
- 42
- 43 (1) Board:
- 44
- 45 (A) The Board's executive director or administrative officer;
- 46

1 (B) The Board's chair; and

2
3 (C) The lead chief elected official of the workforce area; or

4
5 (2) The [AEL grant recipients' or](#) Agency grantees' executive leadership.

6
7 (d) The sanction determination date of notice shall be the date the sanction
8 determination is sent by certified mail. All sanction determinations shall be sent by
9 electronic transmission and by certified mail, return receipt requested.

10
11 (e) The sanction determination shall include the following information:

12
13 (1) the sanctionable act upon which the sanction was based;

14
15 (2) the sanction level in which the Board, [AEL grant recipient,](#) or Agency grantee
16 is placed and the conditions under which the sanction may be removed;

17
18 (3) the penalty and the effective date of the penalty;

19
20 (4) the corrective action required, including the timeline for completing the
21 corrective action; and

22
23 (5) the technical assistance contact from the Agency or other entity to assist in
24 completing the corrective action.

25
26 (f) The Agency shall send the sanction determination at least 10 working days in
27 advance of the effective date of the sanction.

28
29 **SUBCHAPTER I. INCENTIVE AWARDS**

30
31 **§802.161. Scope and Purpose.**

32
33 The purpose of incentive awards is to reward Boards [or AEL grant recipients](#) that meet or
34 exceed the performance benchmarks identified in each incentive award and accomplish
35 the Commission's goals to fulfill the workforce needs of employers and to put Texans to
36 work. The Board [and AEL grant recipient are](#) responsible for providing strategic and
37 operational planning for its workforce area. The development of an integrated and
38 coherent workforce development system at the local level is the primary focus of Boards.
39 Thus, this policy seeks to recognize Boards [or AEL grant recipients](#) for achieving high
40 performance as a system, as well as high performance on behalf of employers and the
41 populations annually targeted by the Commission during the budget process. Incentives
42 will emphasize accountability, high performance, and continuous improvement and
43 support the state in achieving workforce development goals.

1
2 **§802.162. Definitions.**
3

4 The following words and terms when used in this chapter shall have the following
5 meanings, unless the context clearly indicates otherwise.
6

- 7 (1) Allocation of Funds--The total yearly funds initially identified for allocation to
8 a workforce area Board for all programs. This does not include consideration
9 of adjustments in funding made to a specific program(s) by the Commission
10 for purposes of reallocating or redistributing those funds. This may include
11 new allocations or distributions made during a year that result from changes in
12 law or new funding made available to the workforce areas Boards during a
13 year.
14
- 15 (2) Classification--Grouping of Boards or AEL grant recipients with one or more
16 common characteristics (e.g., size) for the purpose of evaluating performance
17 and giving incentive awards.
18
- 19 (3) Extraordinary Circumstances--Conditions that may have an impact on the
20 determination of which Boards or AEL grant recipients may receive or be
21 excluded from receiving incentive awards, which may include, but are not
22 limited to, matters such as serious unforeseen events, unresolved audit or
23 monitoring findings, sanctions, unanticipated changes in economic conditions,
24 the occurrence of a disaster, or legislative changes having a direct impact on
25 the Commission, ~~or~~ Boards, or AEL grant recipients.
26
- 27 (4) Local Coordination--Boards fostering leadership and cooperation to achieve
28 the most effective customer service results for their employers and residents
29 through one or more of the following:
30
- 31 (A) Memoranda of Understanding with required partners that achieve active
32 implementation and integration of related services;
33
 - 34 (B) Memoranda of Understanding with partners required by WIA §121(b)(1)
35 but not required by §801.27(b) of this title that include active
36 implementation and integration of related services;
37
 - 38 (C) ongoing and regular communication and training on the best practices
39 and benchmarks in building systems or delivering services; or
40
 - 41 (D) demonstrating local coordination through other means as determined by
42 the Commission, such as by demonstrating coordination with
43 demonstration grants, youth opportunity grants, self-sufficiency grants,
44 and skills development grants.
45

- 1 (5) Regional Cooperation--Boards working together as a cooperative unit in a
2 region to provide excellence in customer service through one or more of the
3 following:
4
5 (A) submitting joint plans or agreements;
6
7 (B) engaging in ongoing and regular communication regarding the best
8 practices and working together to implement those practices by sharing
9 ideas, data, staff, and other resources;
10
11 (C) providing opportunities for joint training, conferences, and staff
12 interaction; or
13
14 (D) demonstrating regional cooperation through other means as determined
15 by the Commission.
16
17 (6) Workforce development programs--Job-training, employment, and
18 employment-related educational programs and functions as listed in Texas
19 Labor Code §302.021.
20

21 **§802.164. Data Collection.**
22

- 23 (a) Boards [and AEL grant recipients](#) are responsible for complete and accurate data
24 entry prior to Commission-established deadlines.
25
26 (b) The Commission reserves the right not to consider data submitted after the deadline
27 or data that it finds to be inaccurate in its evaluation of performance for awards.
28

29 **§802.169. AEL Incentive Awards.**
30

- 31 (a) The Commission may issue monetary and nonmonetary awards to AEL grant
32 recipients, which may be awarded annually based on high-performance achievement
33 or continuous improvement in meeting performance measures:
34
35 (1) The Commission may determine the amount of funds for use to reward
36 performance annually.
37
38 (2) The Commission may use any combination of existing state or federal
39 performance measures and may develop its own measures to evaluate
40 performance.
41
42 (3) If the Commission includes a measure that does not have a target, the
43 Commission may:
44

1 (A) set an incentive target for the sole purpose of evaluating eligible AEL
2 grant recipients for the incentive awards (failure to meet an incentive
3 target does not subject AEL grant recipients to sanction); or

4
5 (B) rate performance based on each AEL grant recipient's "relative
6 improvement" in performance from the prior year.

7
8 (b) The Commission may use a measure and a subset of a measure in the same year.

9
10 (c) If the Commission is considering issuing awards under this section, the Commission
11 shall notify AEL grant recipients of the method by which performance shall be
12 evaluated for the purpose of giving awards under this rule for that year.

13
14 (1) The notice required under this subsection shall be provided to the AEL grant
15 recipients concurrent with their yearly contracts.

16
17 (2) The notice may include:

18 (A) a listing of awards;

19
20 (B) a listing of the performance measures to be included in each evaluation
21 category including:

22 (i) the period of evaluation for each performance measure; and

23 (ii) the method of evaluation for each performance measure;

24 (C) the weightings to be used to aggregate the performance measures to
25 allow each AEL grant recipient's overall performance to be ranked;

26 (D) the anticipated amount of funds available to be awarded; and

27 (E) other criteria to be used to identify superior performance.

28
29 (d) AEL grant recipients that receive a performance award shall use the incentive award
30 to carry out AEL activities as allowed by state and federal laws.

31
32 (e) The Commission may modify the assignment of awards based on factors that the
33 Commission identifies as extraordinary circumstances.