

1 **CHAPTER 800. GENERAL ADMINISTRATION**

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 JULY 31, 2018, THE TEXAS WORKFORCE COMMISSION PROPOSED THE RULES**
8 **BELOW WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS REGISTER.**

9
10 Estimated Publication Date of the Proposal in the *Texas Register*: **August 17, 2018**
11 Estimated End of Comment Period: **September 17, 2018**

12
13 The Texas Workforce Commission (TWC) proposes amendments to the following sections of
14 Chapter 800, relating to General Administration:

- 15
16 Subchapter A. General Provisions, §800.2
17 Subchapter B. Allocations, §800.78

- 18
19 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**
20 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**
21 **PART III. IMPACT STATEMENTS**
22 **PART IV. COORDINATION ACTIVITIES**

23
24 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

25 Chapter 800 is being revised to align the definition of Adult Education and Literacy (AEL)
26 services with the definition found in the Workforce Innovation and Opportunity Act (WIOA) and
27 to align the deobligation periods for AEL funds more appropriately with the AEL enrollment
28 cycle.

29
30 WIOA was signed into law on July 22, 2014, replacing the Workforce Investment Act (WIA) of
31 1998. Title II of WIOA includes substantial changes to definitions relating to AEL. As previous
32 definitions within Chapter 800 reflected WIA, the enactment of WIOA renders those definitions
33 out-of-date. Accordingly, the definition of "Adult Education and Literacy (AEL)" and other
34 definitions in §800.2 shall be amended to align with the definitions in WIOA.

35
36 After several years of program operations at TWC, there is a need to reevaluate the rules by
37 which AEL funds are deobligated based on the expenditure trends of AEL grant recipients. Like
38 many education sector institutions, AEL grant recipients typically experience a majority of their
39 enrollments during the first three months of the program year (July - September). When AEL
40 grant recipients experience low enrollment during these months when highest enrollment is
41 expected, program delivery statistics demonstrate the unlikelihood of increases later in the year
42 being sufficient to offset initial low enrollment. Low enrollment numbers correlate to lower
43 expenditure thresholds. Establishing expenditure thresholds based on enrollment in months four,
44 five, six, or seven will enable TWC to deobligate the funds of grant recipients that have low
45 expenditures earlier in the program year. As a result, TWC will have adequate time to reallocate
46 funds to other AEL grant recipients with demonstrated higher enrollment and expenditures.

1 Reallocation of funds earlier in the program year will also give grant recipients adequate time to
2 educate and train participants, and participants will have adequate time to achieve outcomes.

3
4 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

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

7
8 **SUBCHAPTER A. GENERAL PROVISIONS**

9 **TWC proposes the following amendments to Subchapter A:**

10
11 **§800.2. Definitions**

12 Section 800.2(1) is amended to align the definition of "Adult Education and Literacy (AEL)"
13 with the definition in WIOA §203(1). AEL is now defined as "academic instruction and
14 education services below the postsecondary level that increase an individual's ability to read,
15 write, and speak in English and perform mathematics or other activities necessary for the
16 attainment of a secondary school diploma or its recognized equivalent; participate in job training
17 and retraining programs or transition to postsecondary education and training; and obtain and
18 retain employment."

19
20 Sections 800.2(15)(E) and 800.2(16) are removed because Project Reintegration of Offenders
21 (Project RIO) is no longer operational. However, Local Workforce Development Boards
22 (Boards) will continue their ongoing efforts to serve ex-offenders through other program
23 activities and services, as appropriate.

24
25 Throughout this section, references and citations pertaining to the repealed WIA have been
26 updated to align with WIOA.

27
28 Paragraphs and subparagraphs have been renumbered and relettered as necessary.

29
30 **SUBCHAPTER B. ALLOCATIONS**

31 **TWC proposes the following amendments to Subchapter B:**

32
33 **§800.78. Midyear Deobligation of AEL Funds**

34 To improve the deobligation of AEL funds by aligning deobligation with the AEL enrollment
35 cycle, §800.78(a)(1) is amended to change the months when expenditure thresholds are evaluated
36 from the end of months five, six, seven, or eight of the program year (that is, midyear) to the end
37 of months four, five, six, or seven (October, November, December, or January) of the program
38 year. Changing the months of evaluation will allow recipients of reallocated funds additional
39 time to enroll participants, educate and train them adequately to achieve outcomes, and fully
40 spend the reallocated funds.

41 **PART III. IMPACT STATEMENTS**

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

44
45 There are no additional estimated costs to the state and to local governments expected as a result
46 of enforcing or administering the rules.

1
2 There are no estimated cost reductions to the state and to local governments as a result of
3 enforcing or administering the rules.

4
5 There are no estimated losses or increases in revenue to the state or to local governments as a
6 result of enforcing or administering the rules.

7
8 There are no foreseeable implications relating to costs or revenue of the state or local
9 governments as a result of enforcing or administering the rules.

10
11 There are no anticipated economic costs to individuals required to comply with the rules.

12
13 There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural
14 communities as a result of enforcing or administering the rules.

15
16 Based on the analyses required by Texas Government Code §2001.024, TWC has determined
17 that the requirement to repeal or amend a rule, as set forth in Texas Government Code
18 §2001.0045, does not apply to this rulemaking.

19
20 Takings Impact Assessment

21 Under Texas Government Code, §2007.002(5), "taking" means a governmental action that
22 affects private real property, in whole or in part or temporarily or permanently, in a manner that
23 requires the governmental entity to compensate the private real property owner as provided by
24 the Fifth and Fourteenth Amendments to the United States Constitution or the Texas
25 Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that
26 would otherwise exist in the absence of the governmental action, and is the producing cause of a
27 reduction of at least 25 percent in the market value of the affected private real property,
28 determined by comparing the market value of the property as if the governmental action is not in
29 effect and the market value of the property determined as if the governmental action is in
30 effect. The Commission completed a Takings Impact Analysis for the proposed rulemaking
31 action under Texas Government Code, §2007.043. The primary purpose of this proposed
32 rulemaking action, as discussed elsewhere in this preamble, is to align the definition of Adult
33 Education and Literacy (AEL) services with the definition found in the Workforce Innovation
34 and Opportunity Act (WIOA) and to align the deobligation periods for AEL funds more
35 appropriately with the AEL enrollment cycle.

36
37 The proposed rulemaking action will not create any additional burden on private real property.
38 The proposed rulemaking action will not affect private real property in a manner that would
39 require compensation to private real property owners under the United States Constitution or the
40 Texas Constitution. The proposal also will not affect private real property in a manner that
41 restricts or limits an owner's right to the property that would otherwise exist in the absence of the
42 governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas
43 Government Code, Chapter 2007.

44
45 Government Growth Impact Statement

46 TWC has determined that during the first five years the proposed amendments will be in effect:

- 1 --the proposed amendments will not create or eliminate a government program;
- 2 --implementation of the proposed amendments will not require the creation or elimination of
- 3 employee positions;
- 4 --implementation of the proposed amendments will not require an increase or decrease in future
- 5 legislative appropriations to TWC;
- 6 --the proposed amendments will not require an increase or decrease in fees paid to TWC;
- 7 --the proposed amendments will not create a new regulation;
- 8 --the proposed amendments will not expand, limit, or eliminate an existing regulation;
- 9 --the proposed amendments will not change the number of individuals subject to the rules; and
- 10 --the proposed amendments will not positively or adversely affect the state's economy.

11
12 Economic Impact Statement and Regulatory Flexibility Analysis

13 TWC has determined that the proposed rules will not have an adverse economic impact on small
14 businesses or rural communities, as these proposed rules place no requirements on small
15 businesses or rural communities.

16
17 Mariana Vega, Director of Labor Market and Career Information, has determined that there is no
18 significant negative impact upon employment conditions in the state as a result of the rules.

19
20 Courtney Arbour, Director, Workforce Development Division, has determined that for each year
21 of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing
22 the proposed rules will be to give AEL grant recipients that receive reallocated funds additional
23 time to enroll participants, educate and train them adequately to achieve outcomes, and fully
24 spend the reallocated funds.

25
26 TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be
27 within TWC's legal authority to adopt.

28
29 **PART IV. COORDINATION ACTIVITIES**

30 In the development of these rules for publication and public comment, TWC sought the
31 involvement of Texas' 28 Local Workforce Development Boards. TWC provided the concept
32 paper regarding these rule amendments to the AEL grant recipients for consideration and review
33 on May 22, 2018. TWC also conducted a conference call with AEL grantees on May 24, 2018, to
34 discuss the concept paper. During the rulemaking process, TWC considered all information
35 gathered in order to develop rules that provide clear and concise direction to all parties involved.

36
37 Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce
38 Program Policy, Attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas
39 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us.
40 Comments must be received or postmarked no later than 30 days from the date this proposal is
41 published in the *Texas Register*.

42
43 The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide
44 TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the
45 effective administration of TWC services and activities.

1 The proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.
2

1 [Innovation and Opportunity Act \(WIOA\) §107 \(29 U.S.C. §3122\)](#)~~Workforce~~
2 ~~Investment Act §117 (WIOA) (29 U.S.C.A. §2832)~~, including those functions
3 required of a [youth standing committee](#)~~Youth Council~~, as provided for under
4 [WIOA §107\(i\)](#)~~Workforce Investment Act §117(i)~~. The definition of Board
5 shall apply to all uses of the term in the rules contained in this part, or unless
6 otherwise defined, relating to the Texas Workforce Commission~~that are~~
7 ~~adopted after February 1, 2001~~. Boards are subrecipients as defined in OMB
8 Circular A-133.

- 9
- 10 (5) Child Care--Child care services funded through the Commission, which may
11 include services funded under the Child Care and Development Fund, [WIOA](#)
12 ~~WIA~~, and other funds available to the Commission or a Board to provide
13 quality child care to assist families seeking to become independent from, or
14 who are at risk of becoming dependent on, public assistance while parents are
15 either working or participating in educational or training activities in
16 accordance with state and federal statutes and regulations.
- 17
- 18 (6) Choices--The employment and training activities created under §31.0126 of
19 the Texas Human Resources Code and funded under [Temporary Assistance for](#)
20 [Needy Families \(TANF\) \(42 USC 601 et seq.\)](#) ~~TANF) (42 U.S.C.A.U.S.C. 601~~
21 ~~et seq.)~~ to assist [individuals](#) ~~persons~~ who are receiving temporary cash
22 assistance, transitioning off, or at risk of becoming dependent on temporary
23 cash assistance or other public assistance in obtaining and retaining
24 employment.
- 25
- 26 (7) Commission--The body of governance of the Texas Workforce Commission
27 composed of three members appointed by the governor as established under
28 Texas Labor Code §301.002 that includes one representative of labor, one
29 representative of employers, and one representative of the public. The
30 definition of Commission shall apply to all uses of the term in rules contained
31 in this part, ~~or~~ unless otherwise defined, relating to the Texas Workforce
32 Commission~~that are adopted after February 1, 2001~~.
- 33
- 34 (8) Formal Measures--Workforce development services performance measures
35 adopted by the governor and developed and recommended through the Texas
36 Workforce Investment Council (TWIC).
- 37
- 38 (9) Employment Service--A program to match qualified job seekers with
39 employers through a statewide network of one-stop career centers. (~~The~~
40 Wagner-Peyser Act of 1933 (Title 29 U.S.C., Chapter 4B) as amended by
41 [WIOA \(P.L. 113-128\)](#))~~the Workforce Investment Act of 1998 (P.L. 105-220)~~
- 42
- 43 (10) Executive Director--The individual appointed by the Commission to
44 administer the daily operations of the Agency, which may include [an](#)
45 [individual](#) ~~a person~~ delegated by the Executive Director to perform a specific
46 function on behalf of the Executive Director.

- 1
- 2 (11) Local Workforce Development Area (workforce area)--Workforce areas
- 3 designated by the governor pursuant to Texas Government Code §2308.252
- 4 and functioning as a Local Workforce Investment Area, as provided for under
- 5 WIOA §106 and §189(i)(1) (29 U.S.C. §3121 and §3249) ~~Workforce~~
- 6 ~~Investment Act §116 and §189(i)(2) (29 U.S.C.A., §2831 and §2939).~~
- 7
- 8 (12) One-Stop Service Delivery Network--A one-stop--based network under which
- 9 entities responsible for administering separate workforce investment,
- 10 educational, and other human resources programs and funding streams
- 11 collaborate to create a seamless network of service delivery that shall enhance
- 12 the availability of services through the use of all available access and
- 13 coordination methods, including telephonic and electronic methods--also
- 14 known as Texas Workforce Solutions.
- 15
- 16 (13) Performance Measure--An expected performance outcome or result.
- 17
- 18 (14) Performance Target--A contracted numerical value setting the acceptable and
- 19 expected performance outcome or result to be achieved for a performance
- 20 measure, including Core Outcome Formal Measures. Achievement between 95
- 21 and 105 percent of the established target is considered meeting the target.
- 22
- 23 (15) Program Year--The twelve-month period applicable to the following as
- 24 specified:
- 25
- 26 (A) Child Care: October 1 - September 30;
- 27
- 28 (B) Choices: October 1 - September 30;
- 29
- 30 (C) Employment Service: October 1 - September 30;
- 31
- 32 (D) Supplemental Nutrition Assistance Program Employment and Training:
- 33 October 1 - September 30;
- 34
- 35 ~~(E) Project RIO: October 1 - September 30;~~
- 36
- 37 ~~(E)(F)~~ Trade Act services: October 1 - September 30;
- 38
- 39 ~~(F)(G)~~ WIOA ~~Workforce Investment Act (WIA)~~-Adult, Dislocated Worker,
- 40 and Youth formula funds: July 1 - June 30;
- 41
- 42 ~~(G)(H)~~ WIOA ~~WIA~~-Alternative Funding for Statewide Activities: October 1
- 43 - September 30;
- 44
- 45 ~~(H)(I)~~ WIOA ~~WIA~~-Alternative Funding for One-Stop Enhancements:
- 46 October 1 - September 30; and

1
2 ~~(I)(J)~~ Adult Education and Literacy: July 1 - June 30.
3

4 ~~(16) Project Reintegration of Offenders (RIO) – A program that prepares and~~
5 ~~transitions ex-offenders released from Texas Department of Criminal Justice or~~
6 ~~Texas Juvenile Justice Department incarceration into gainful employment as~~
7 ~~soon as possible after release, consistent with provisions of the Texas Labor~~
8 ~~Code, Chapter 306; Texas Government Code §2308.312; and the~~
9 ~~Memorandum of Understanding with the Texas Department of Criminal~~
10 ~~Justice and the Texas Juvenile Justice Department.~~

11
12 ~~(16)(17)~~ Supplemental Nutrition Assistance Program Employment and Training
13 (SNAP E&T)--A program to assist SNAP recipients to become self-supporting
14 through participation in activities that include employment, job readiness,
15 education, and training, activities authorized and engaged in as specified by
16 federal statutes and regulations 7 USC §2011 ~~(7 U.S.C.U.S.C.A. §2011)~~, and
17 Chapter 813 of this title relating to Supplemental Nutrition Assistance Program
18 Employment and Training.
19

20 ~~(17)(18)~~ TANF--Temporary Assistance for Needy Families, which may include
21 temporary cash assistance and other temporary assistance for eligible
22 individuals, as defined in the Personal Responsibility and Work Opportunity
23 Reconciliation Act of 1996, as amended 7 USC §2011 (et seq.) ~~(7~~
24 ~~U.S.C.U.S.C.A. §201.12011 et seq.)~~ and the TANF statutes and regulations (42
25 USC §601 et seq. ~~(42 U.S.C.U.S.C.A. §601 et seq.,~~ 45 Code of Federal
26 Regulations (CFR) ~~(C.F.R.)~~ Parts 260 - 265). TANF may also include the
27 TANF State Program (TANF SP), relating to two-parent families, which is
28 codified in Texas Human Resources Code, Chapter 34.
29

30 ~~(18)(19)~~ Trade Act Services--Programs authorized by the Trade Act of 1974, as
31 amended (and 20 CFR ~~C.F.R.~~ Part 617) providing services to dislocated
32 workers eligible for Trade benefits through Workforce Solutions Offices.
33

34 ~~(19)(20)~~ TWIC--Texas Workforce Investment Council, appointed by the governor
35 pursuant to Texas Government Code §2308.052 and functioning as the State
36 Workforce Investment Board, as provided for under WIOA §101(e) ~~(29 U.S.C.~~
37 ~~3111(e))~~ Workforce Investment Act §111(e) ~~(29 U.S.C.A. §2821(e))~~. In
38 addition, pursuant to WIOA §-193(a)(5) ~~(29 U.S.C. (3253(a)(5))~~ the Workforce
39 Investment Act §194(a)(5) ~~(29 U.S.C.A. §2944(a)(5))~~, TWIC maintains the
40 duties, responsibilities, powers, and limitations as provided in Texas
41 Government Code §§2308.101 - 2308.105.
42

43 ~~(20)(21)~~ WIOA-Workforce Innovation and Opportunity Act--(P.L. 113 - 128, 29
44 U.S.C. §3101 et seq.) ~~WIA—Workforce Investment Act (P.L. 105 - 220, 29~~
45 ~~U.S.C.A. §2801 et seq.)~~. References to WIOA ~~WIA~~ include references to
46 WIOA ~~WIA~~ formula-allocated funds unless specifically stated otherwise.

1
2 ~~(21)(22)~~ WIOA ~~WIA~~-Formula-Allocated Funds--Funds allocated by formula to
3 workforce areas for each of the following separate categories of services:
4 WIOA ~~WIA~~-Adult, Dislocated Worker, and Youth (excluding the Secretary's
5 and Governor's ~~governor's~~ reserve funds and rapid response funds).
6

7 ~~(22)(23)~~ Workforce Solutions Offices Partner--An entity that carries out a
8 workforce investment, educational, or other human resources program or
9 activity, and that participates in the operation of the One-Stop Service Delivery
10 Network in a workforce area consistent with the terms of a memorandum of
11 understanding entered into between the entity and the Board.
12

13 **SUBCHAPTER B. ALLOCATIONS**

14 **§800.78. Midyear Deobligation of AEL Funds.**

- 15
16
17 (a) The Commission may deobligate funds from an AEL grant recipient during the program
18 year if an AEL grant recipient is not meeting the expenditure thresholds set forth in
19 subsection (b) of this section, provided, however, that the requirements of subsection (d)
20 of this section are satisfied.
21
- 22 (1) AEL grant recipients that fail to meet the expenditure thresholds set forth in
23 subsection (b) of this section at the end of months four, five, six, or seven
24 (October, November, December, or January) ~~five, six, seven, or eight of the~~
25 ~~program year (i.e., midyear)~~ will be reviewed to determine the causes for the
26 under expenditure of funds, except as set forth in subsection (e) of this section.
27
- 28 (2) The Commission shall not deobligate more than the difference between an
29 AEL grant recipient's actual expenditures and the amount corresponding to the
30 relative proportion of the program year.
31
- 32 (3) The Commission shall not deobligate funds from an AEL grant recipient that
33 failed to meet the expenditure thresholds set forth in subsection (b) of this
34 section, if within 60 days prior to the potential deobligation period the
35 Commission executes a contract amendment for a supplemental allocation or
36 reallocation of funds in the same program funding category.
37
- 38 (b) The Commission may deobligate funds from an AEL grant recipient midyear, as set
39 forth in subsection (a) of this section, if an AEL grant recipient fails to achieve the
40 expenditure of an amount corresponding to 90 percent or more of the relative
41 proportion of the program year.
42
- 43 (c) An AEL grant recipient subject to deobligation for failure to meet the requirements
44 set forth in this section shall, upon request by the Commission, submit a written
45 justification. For an AEL consortium, a copy must be provided to all AEL
46 consortium members. The written justification shall provide sufficient detail

1 regarding the actions an AEL grant recipient will take to address its deficiencies,
2 including:

- 3
- 4 (1) expansion of services proportionate to the available resources;
 - 5
 - 6 (2) projected service levels and related performance;
 - 7
 - 8 (3) reporting outstanding obligations; and
 - 9
 - 10 (4) any other factors an AEL grant recipient would like the Commission to
11 consider.
 - 12

- 13 (d) Any amounts deobligated from an AEL grant recipient must be made available as a
14 first priority to any other AEL grant recipient(s) providing AEL services within the
15 same workforce area that meet the requirements of §800.80(a) of this subchapter,
16 upon receipt and approval by the Commission of an acceptable plan.
- 17
- 18 (e) To the extent this section may be found not to comply with federal requirements, or
19 should any related federal waivers expire, the Commission will be subject to federal
20 requirements in effect, as applicable.