

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

2  
3 **ADOPTED 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 FEBRUARY 4, 2014**, THE TEXAS WORKFORCE COMMISSION ADOPTED THE  
8 BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

9  
10 Estimated date of publication in the *Texas Register*: February 21, 2014  
11 The rules will take effect: February 24, 2014  
12

13 The Texas Workforce Commission (Commission) adopts the following new section to Chapter  
14 802, relating to Integrity of the Texas Workforce System, *without* changes, as published in the  
15 November 29, 2013, issue of the *Texas Register* (38 TexReg 8599):  
16

17 Subchapter I. Incentive Awards, §802.169  
18

19 The Commission adopts amendments to the following sections of Chapter 802, relating to  
20 Integrity of the Texas Workforce System, *without* changes, as published in the November 29,  
21 2013, issue of the *Texas Register* (38 TexReg 8599):  
22

23 Subchapter A. Purpose and General Provisions, §802.1

24 Subchapter D. Agency Monitoring Activities, §§802.61 - 802.66

25 Subchapter E. Board and Workforce Service Provider Monitoring Activities, §§802.81 -  
26 802.87

27 Subchapter F. Performance and Accountability, §§802.101 - 802.104

28 Subchapter G. Corrective Actions, §§802.121 - 802.125

29 Subchapter I. Incentive Awards, §§802.161, 802.162, and 802.164  
30

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

32 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND**  
33 **RESPONSES**  
34

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

36 Senate Bill (SB) 307, enacted by the 83rd Texas Legislature, Regular Session (2013), added  
37 Texas Labor Code, Chapter 315, which transferred adult education and literacy (AEL) programs  
38 from the Texas Education Agency (TEA) to the Commission no later than January 1, 2014.  
39

40 SB 307 mandates that the Commission:

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

- 1 --prescribe rules and standards for teacher certification and accreditation; and
- 2 --develop a standardized assessment mechanism, and monitor and evaluate educational and
- 3 employment outcomes of students who participate in AEL programs.

4

5 In addition, SB 307 mandates that the Agency use a competitive procurement process to award

6 contracts to service providers of local education programs. To complete a competitive

7 procurement and have contracts in place by July 2014, a January 2014 target date has been set

8 for the adoption of new Chapter 805, regarding AEL programs.

9

10 SB 307 expressly requires the Commission to develop and establish a process for awarding

11 performance incentive funds annually. In developing the process for awarding such funds, the

12 Commission was directed to prescribe fiscal and programmatic performance criteria to be used to

13 evaluate the performance of entities delivering AEL services. Further, as part of this process, SB

14 307 requires procedures for taking corrective action. Chapter 802 sets out Agency standards for

15 program and fiscal monitoring, performance and accountability, and corrective actions and

16 incentive awards. The adopted amendments to Chapter 802 are intended to apply Agency

17 standards to AEL programs, as appropriate, consistent with the Adult Education and Family

18 Literacy Act, federal regulations, National Reporting System for Adult Education, and OMB

19 Circulars.

20

21 Further, to fully incorporate AEL programs into the Agency's administrative oversight

22 framework, amendments are necessary in Chapter 800, regarding General Administration. To

23 ensure a seamless transition of rules, the Chapter 800 amendments and new Chapter 805 are

24 adopted concurrently with this rulemaking.

25

26 To better understand the major issues currently facing adult education, the Commission held a

27 series of nine public meetings across the state to hear from stakeholders concerning the transfer

28 of the AEL programs from TEA to the Agency, and to gather input about what is currently

29 working well and where there is opportunity for improvement. AEL stakeholder communication

30 has continued throughout the transition, and the Commission greatly values the thoughts,

31 recommendations, and suggestions provided by the AEL stakeholder community.

32

33 The purpose of the adopted Chapter 802 amendments is to:

- 34 --apply the following to AEL grant recipients and AEL service providers, as appropriate:
  - 35 --Provisions governing monitoring responsibilities;
  - 36 --Provisions ensuring accountability in meeting the needs of customers, ensuring that
  - 37 performance targets are met or exceeded, and describing Commission policies for
  - 38 noncompliance;
  - 39 --Provisions for imposing corrective actions for failure to ensure compliance with contracted
  - 40 performance measures, contract provisions, and other Agency-determined standards; and
  - 41 --Provisions regarding incentive awards, rewarding the meeting or exceeding of performance
  - 42 benchmarks, and accomplishing the Commission's goals to fulfill the workforce needs of
  - 43 employers and to put Texans to work; and
- 44 --make technical changes, as necessary.

1 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND**  
2 **RESPONSES**

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

7 **SUBCHAPTER A. PURPOSE AND GENERAL PROVISIONS**

8 **The Commission adopts the following amendments to Subchapter A:**  
9

10 **§802.1. Purpose and General Provisions**

11 Section 802.1(a) adds that the purpose of Subchapter A is "to implement Texas Labor Code,  
12 Chapter 315, regarding Adult Education and Literacy programs."  
13

14 **SUBCHAPTER D. AGENCY MONITORING ACTIVITIES**

15 **The Commission adopts the following amendments to Subchapter D:**  
16

17 **§802.61. Purpose**

18 Section 802.61 adds "AEL grant recipients" and "AEL service providers" as entities subject to  
19 the provisions of Subchapter D, regarding Agency monitoring activities.  
20

21 **§802.62. Program and Fiscal Monitoring**

22 Section 802.62 adds "AEL grant recipients" and "AEL service providers" as entities subject to  
23 the provisions regarding program and fiscal monitoring.  
24

25 Section 802.62(b)(2) adds "U.S. Department of Education, Office of Vocational and Adult  
26 Education guidance." AEL grant recipients' and AEL service providers' compliance with this  
27 guidance will be assessed by program and fiscal monitoring activities.  
28

29 **§802.63. Program Monitoring Activities**

30 Section 802.63 adds "AEL grant recipients" and "AEL service providers" as entities subject to  
31 the provisions regarding program monitoring activities.  
32

33 **§802.64. Fiscal Monitoring Activities**

34 Section 802.64(a) adds "AEL grant recipients" and "AEL service providers" as entities subject to  
35 the provisions regarding fiscal monitoring activities.  
36

37 **§802.65. Agency Monitoring Reports and Resolution**

38 Section 802.65 adds "AEL grant recipients" and "AEL service providers" as entities subject to  
39 the provisions regarding Agency monitoring reports and resolution.  
40

41 **§802.66. Access to Records**

42 Section 802.66 adds "AEL grant recipients" and "AEL service providers" as entities subject to  
43 the provisions regarding access to records.  
44  
45

1 **SUBCHAPTER E. BOARD, WORKFORCE SERVICE PROVIDER, AND AEL GRANT**  
2 **RECIPIENT MONITORING ACTIVITIES**

3 **The Commission adopts the following amendments to Subchapter E:**

4  
5 **§802.81. Scope and Purpose**

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

8  
9 **§802.82. Board, Workforce Service Provider, and AEL Grant Recipient Monitoring**

10 Section 802.82:

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

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

16  
17 Section 802.82(b) adds "U.S. Department of Education Office of Vocational and Adult  
18 Education guidance." AEL service providers' compliance with this guidance will be assessed by  
19 monitoring activities.

20  
21 **§802.83. Risk Assessment**

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

24  
25 **§802.84. Monitoring Plan**

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

28  
29 **§802.85. Controls over Monitoring**

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

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

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

36  
37 **§802.87. Independent Audit Requirements**

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

40  
41 Section 802.87(3) adds "OMB Circular A-21" as guidance to be followed by Boards, workforce  
42 service providers, AEL grant recipients, AEL service providers, and Agency grantees.

43  
44 Section 802.87(4) adds "OMB Circular A-110" as guidance to be followed by Boards, workforce  
45 service providers, AEL grant recipients, AEL service providers, and Agency grantees.

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

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

4 **The Commission adopts the following amendments to Subchapter F:**

5  
6 **§802.101. Scope and Purpose**

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

10  
11 **§802.102. Performance Requirements and Expectations**

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

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

18  
19 **§802.103. Performance Review and Assistance**

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

22  
23 **§802.104. Performance Improvement Actions**

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

26  
27 **SUBCHAPTER G. CORRECTIVE ACTIONS**

28 **The Commission adopts the following amendments to Subchapter G:**

29  
30 **§802.121. Imposition of Corrective Actions and Corrective Action Plans**

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

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

37  
38 **Comment:** One commenter expressed concern regarding the possibility of corrective  
39 actions, as set forth in §802.121, to ensure compliance. Specifically, the commenter was  
40 concerned that compliance with one or more contracted performance measures is  
41 unrealistic.

42  
43 **Response:** Many of the entities funded by the Commission, including Boards, workforce  
44 service providers, and Agency grantees, must ensure compliance with multiple federal,  
45 state, or Commission-determined performance measures. The Commission intends to  
46 hold AEL grant recipients and AEL service providers to the same standard. The

1 Commission also works diligently with the entities that it funds to mitigate risk and  
2 provide support and assistance before imposing corrective actions set forth in §802.121.  
3

4 **§802.122. Intent to Sanction**

5 Section 802.122 adds "AEL grant recipients" as entities subject to the provisions regarding intent  
6 to sanction.  
7

8 **§802.123. Sanctions**

9 Section 802.123 adds "AEL grant recipient" as an entity subject to the provisions regarding  
10 sanctions.  
11

12 **§802.124. Penalties for Noncompliance with Requirements**

13 Section 802.124 adds "AEL grant recipient" and "AEL service provider" as entities subject to the  
14 provisions regarding penalties for noncompliance with requirements.  
15

16 **§802.125. Sanction Determination**

17 Section 802.125 adds "AEL grant recipient" as an entity subject to the provisions regarding  
18 sanction determination.  
19

20 **SUBCHAPTER I. INCENTIVE AWARDS**

21 **The Commission adopts the following amendments to Subchapter I:**  
22

23 **§802.161. Scope and Purpose**

24 Section 802.161 adds "AEL grant recipients" as entities subject to the provisions regarding the  
25 scope and purpose of incentive awards.  
26

27 **§802.162. Definitions**

28 Section 802.162(1) replaces the term "Board" with "workforce area" to clarify that the  
29 Commission allocates funds to local workforce development areas.  
30

31 **§802.164. Data Collection**

32 Section 802.164 adds "AEL grant recipients" as entities subject to the provisions regarding data  
33 collection.  
34

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

36 New §802.169 sets forth the provisions for AEL incentive awards, as follows:  
37

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

- 41 --(1) The Commission may determine the amount of funds for use to reward performance  
42 annually.
- 43 --(2) The Commission may use any combination of existing state or federal performance  
44 measures and may develop its own measures to evaluate performance.
- 45 --(3) If the Commission includes a measure that does not already have a target, the Commission  
46 may:

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

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

7 New §802.169(b) states that the Commission may use a measure and a subset of a measure in the  
8 same year.  
9

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

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

15 --(2) The notice may include:

16 --(A) a listing of awards;

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

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

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

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

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

24 --(E) other criteria to be used to identify superior performance.  
25

26 New §802.169(d) provides that AEL grant recipients that receive a performance award shall use  
27 the incentive award to carry out AEL activities as allowed by state and federal laws.  
28

29 New §802.169(e) states that the Commission may modify the assignment of awards based on  
30 factors that the Commission identifies as extraordinary circumstances.  
31

32 **COMMENTS WERE RECEIVED FROM:**

33 Kay Brooks, Grant Project Manager for GED & ESL Program, Brazosport College  
34

35 The Agency hereby certifies that the adoption has been reviewed by legal counsel and found to  
36 be within the Agency's legal authority to adopt.  
37

38 The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the  
39 Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it  
40 deems necessary for the effective administration of Agency services and activities.  
41

42 The rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.  
43  
44  
45

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  
25                        (1) the expiration of the contract;  
26  
27                        (2) the contract renewal date; or  
28  
29                        (3) the expiration of the Board member's term or the Board member's resignation.  
30  
31                  (f) Pursuant to Texas Government Code, Chapter 551 (Open Meetings Act), a Board  
32                  shall:  
33  
34                        (1) post appropriate notice;  
35  
36                        (2) ensure that all public business or public policy over which the Board has  
37                        supervision or control is discussed, considered, or acted upon during a properly  
38                        posted and convened open meeting; and  
39  
40                        (3) prepare and retain minutes or tape recordings of each open meeting of the  
41                        Board. The minutes shall:  
42  
43                            (A) state the subject of each deliberation; and



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 (2) Performance measures
- 33 (3) Reporting accuracy
- 34 (4) Record keeping and file maintenance
- 35 (5) Monitoring functions
- 36 (6) Self-monitoring activities
- 37 (7) Service delivery
- 38 (8) Automated systems and reporting
- 39
- 40
- 41
- 42
- 43
- 44
- 45
- 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 (a) Right of Access

- 36  
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, Board, or AEL grant recipient may request custody of records if  
28 one 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, WORKFORCE SERVICE PROVIDER, AND AEL GRANT**  
6 **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, workforce service providers, and AEL grant  
12 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, Workforce Service Provider, and AEL Grant Recipient Monitoring.**  
19

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

1 and AEL grant recipient shall conduct regular oversight and monitoring of its  
2 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 (c) The monitoring function shall include the development and implementation of:

- 12  
13 (1) a risk assessment tool;  
14  
15 (2) a monitoring plan;  
16  
17 (3) a monitoring program, including established policies and procedures; and  
18  
19 (4) reporting and resolution processes.

20  
21 (d) The Board and workforce service provider, or the AEL grant recipient and AEL  
22 service provider, shall develop and implement written policies and procedures that  
23 describe and support the monitoring process.  
24  
25

26 **§802.83. Risk Assessment.**

- 27  
28 (a) Boards, workforce service providers, and AEL grant recipients shall include the use  
29 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 monitoring functions shall be responsible for  
35 determining what constitutes high risk or an area of high risk.  
36  
37 (c) Boards, workforce service providers, and AEL grant recipients shall establish  
38 monitoring schedules and monitoring programs that best use monitoring resources.  
39 Boards, 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, workforce service providers, and AEL grant recipients shall develop their  
45 own local-level monitoring plan based on the results of the risk assessment. This  
46 monitoring plan shall incorporate the following:



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

**§802.85. Controls over Monitoring.**

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

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

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

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

- 1  
2 (c) Boards, workforce service providers, and AEL grant recipients shall ensure that a  
3 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) *Government Auditing Standards* (U.S. Government Accountability Office);  
21 and  
22  
23 (6) 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 WD  
26 Letters and AEL Letters, the Agency's Financial Manual for Grants and  
27 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, the  
29 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 in correcting deficiencies.
- 19

20 **§802.122. Intent to Sanction.**

- 21
- 22 (a) The Agency may issue an intent to sanction to set forth:
- 23
- 24 (1) a corrective action plan and performance review and assistance activities;
- 25
- 26 (2) a specific timeline for the implementation of the corrective action plan by a
- 27 Board, AEL grant recipient, or Agency grantee; and
- 28
- 29 (3) an opportunity to cure the sanctionable acts.
- 30
- 31 (b) There shall be no appeal to an intent to sanction.
- 32

33 **§802.123. Sanctions.**

- 34
- 35 (a) Level-One Sanction. The Agency may impose a level-one sanction on a Board, AEL
- 36 grant recipient, or Agency grantee for sanctionable acts. Sanctionable acts that occur
- 37 during the program, grant, fiscal, contract, or calendar year include, but are not
- 38 limited to, the following:
- 39
- 40 (1) failure to submit timely and accurate required financial or performance reports;
- 41
- 42 (2) failure to take corrective actions to resolve findings identified during
- 43 monitoring, investigative, or program reviews, including failure to comply
- 44 with a technical assistance plan developed by the Agency;
- 45

- 1 (3) failure to rectify or resolve all independent audit findings or questioned costs  
2 within required time frames;
- 3
- 4 (4) failure to submit required annual audits;
- 5
- 6 (5) breach of administrative and service contract requirements;
- 7
- 8 (6) failure to retain required service delivery and financial records; or
- 9
- 10 (7) failure to meet the target on any contracted performance measure by more than  
11 10 percent of target.
- 12

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

- 17
- 18 (1) failure to rectify a level-one sanction within six months of notice;
- 19
- 20 (2) committing a second sanctionable act;
- 21
- 22 (3) failure to rectify reported threats to health and safety of program participants  
23 within 30 days of notice. Rectifying health and safety may include  
24 investigating a complaint, taking appropriate corrective actions, or making  
25 referrals to appropriate authorities; or
- 26
- 27 (4) failure to meet the target on any contracted performance measure by more than  
28 25 percent of target.
- 29

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

- 34
- 35 (1) failure to rectify a level-one sanction within one year of notice;
- 36
- 37 (2) failure to rectify a level-two sanction within six months of notice;
- 38
- 39 (3) committing multiple sanctionable acts;
- 40
- 41 (4) failure to rectify reported threats to health and safety of program participants  
42 within 60 days of notice. Rectifying health and safety may include  
43 investigating a complaint, taking appropriate corrective action, or making  
44 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 to complete the  
5 corrective actions described in this subchapter within the specified time limits may  
6 result in the Agency imposing penalties under this subchapter and withholding  
7 contract payments to the Board, AEL grant recipient, or Agency grantee.  
8
- 9 (f) Penalties for Second-Year WIA Nonperformance. If a Board fails to meet its targets  
10 on 25 percent of its contracted measures by more than 20 percent of target for two  
11 consecutive program years, the Commission shall review the performance  
12 deficiencies and shall make a recommendation to TWIC that it impose a  
13 reorganization plan for the workforce area. The Commission's recommendation to  
14 TWIC for reorganization of a workforce area may include one or more of the  
15 corrective actions or penalties included in this subchapter. Notwithstanding this  
16 subsection, the Commission may take other action deemed appropriate as consistent  
17 with federal law.  
18
- 19 (g) Penalties for Failures Regarding the One-Stop Service Delivery Network. Failure of  
20 a Board to ensure the continued operation of a one-stop service delivery network as  
21 required by WIA §121 and Chapter 801, Subchapter B, One-Stop Service Delivery  
22 Network of this title, including failure to properly certify Workforce Solutions  
23 Offices as defined in §801.24 of this title, may result in the imposition of penalties as  
24 provided in this subchapter, and the Agency's withholding of payment for any  
25 administrative expenses until the Board demonstrates to the satisfaction of the  
26 Agency that all of the required elements of a one-stop service delivery network are  
27 operational.  
28

29 **§802.125. Sanction Determination.**

- 30
- 31 (a) The director of Agency's Workforce Development Division determines whether a  
32 sanction shall be imposed, including whether it is appropriate to impose a sanction  
33 level on the Board, AEL grant recipient, or Agency grantee and whether it is  
34 appropriate to assign a penalty.  
35
- 36 (b) The Commission shall work in concert with TWIC, as appropriate, to impose  
37 sanctions as required by Texas Government Code §2308.268 and §2308.269.  
38
- 39 (c) The Agency shall send a written notice of sanction determination (sanction  
40 determination) to the following:  
41
- 42 (1) Board:
- 43 (A) The Board's executive director or administrative officer;  
44 (B) The Board's chair; and  
45  
46

1  
2 (C) The lead chief elected official of the workforce area; or

3  
4 (2) The AEL grant recipients' or Agency grantees' executive leadership.

5  
6 (d) The sanction determination date of notice shall be the date the sanction  
7 determination is sent by certified mail. All sanction determinations shall be sent by  
8 electronic transmission and by certified mail, return receipt requested.

9  
10 (e) The sanction determination shall include the following information:

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

12 (2) the sanction level in which the Board, AEL grant recipient, or Agency grantee  
13 is placed and the conditions under which the sanction may be removed;

14 (3) the penalty and the effective date of the penalty;

15 (4) the corrective action required, including the timeline for completing the  
16 corrective action; and

17 (5) the technical assistance contact from the Agency or other entity to assist in  
18 completing the corrective action.

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

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28 **SUBCHAPTER I. INCENTIVE AWARDS**

29  
30 **§802.161. Scope and Purpose.**

31  
32 The purpose of incentive awards is to reward Boards or AEL grant recipients that meet or  
33 exceed the performance benchmarks identified in each incentive award and accomplish  
34 the Commission's goals to fulfill the workforce needs of employers and to put Texans to  
35 work. The Board and AEL grant recipient are responsible for providing strategic and  
36 operational planning for its workforce area. The development of an integrated and  
37 coherent workforce development system at the local level is the primary focus of Boards.  
38 Thus, this policy seeks to recognize Boards or AEL grant recipients for achieving high  
39 performance as a system, as well as high performance on behalf of employers and the  
40 populations annually targeted by the Commission during the budget process. Incentives  
41 will emphasize accountability, high performance, and continuous improvement and  
42 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 for all programs. This does not include consideration of  
9 adjustments in funding made to a specific program(s) by the Commission for  
10 purposes of reallocating or redistributing those funds. This may include new  
11 allocations or distributions made during a year that result from changes in law  
12 or new funding made available to the workforce areas during a year.  
13
- 14 (2) Classification--Grouping of Boards or AEL grant recipients with one or more  
15 common characteristics (e.g., size) for the purpose of evaluating performance  
16 and giving incentive awards.  
17
- 18 (3) Extraordinary Circumstances--Conditions that may have an impact on the  
19 determination of which Boards or AEL grant recipients may receive or be  
20 excluded from receiving incentive awards, which may include, but are not  
21 limited to, matters such as serious unforeseen events, unresolved audit or  
22 monitoring findings, sanctions, unanticipated changes in economic conditions,  
23 the occurrence of a disaster, or legislative changes having a direct impact on  
24 the Commission, Boards, or AEL grant recipients.  
25
- 26 (4) Local Coordination--Boards fostering leadership and cooperation to achieve  
27 the most effective customer service results for their employers and residents  
28 through one or more of the following:  
29
- 30 (A) Memoranda of Understanding with required partners that achieve active  
31 implementation and integration of related services;  
32
  - 33 (B) Memoranda of Understanding with partners required by WIA §121(b)(1)  
34 but not required by §801.27(b) of this title that include active  
35 implementation and integration of related services;  
36
  - 37 (C) ongoing and regular communication and training on the best practices  
38 and benchmarks in building systems or delivering services; or  
39
  - 40 (D) demonstrating local coordination through other means as determined by  
41 the Commission, such as by demonstrating coordination with  
42 demonstration grants, youth opportunity grants, self-sufficiency grants,  
43 and skills development grants.  
44

- 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  
19 (A) a listing of awards;  
20  
21 (B) a listing of the performance measures to be included in each evaluation  
22 category including:  
23  
24 (i) the period of evaluation for each performance measure; and  
25  
26 (ii) the method of evaluation for each performance measure;  
27  
28 (C) the weightings to be used to aggregate the performance measures to  
29 allow each AEL grant recipient's overall performance to be ranked;  
30  
31 (D) the anticipated amount of funds available to be awarded; and  
32  
33 (E) other criteria to be used to identify superior performance.  
34  
35 (d) AEL grant recipients that receive a performance award shall use the incentive award  
36 to carry out AEL activities as allowed by state and federal laws.  
37  
38 (e) The Commission may modify the assignment of awards based on factors that the  
39 Commission identifies as extraordinary circumstances.  
40