

1 **CHAPTER 800. GENERAL ADMINISTRATION**

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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*.**
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7 **ON DECEMBER 1, 2020, 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*: **December 18, 2020**
11 The rules will take effect: **December 21, 2020**
12

13 The Texas Workforce Commission (TWC) adopts amendments to the following section of
14 Chapter 800, relating to General Administration, *without* changes, as published in the September
15 25, 2020, issue of the *Texas Register* (45 TexReg 6758):
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17 Subchapter B. Allocations, §800.68
18

19 TWC adopts the following new section to Chapter 800, relating to General Administration,
20 *without* changes, as published in the September 25, 2020, issue of the *Texas Register* (45 TexReg
21 6758):
22

23 Subchapter F. Interagency Matters, §800.206
24

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

26 House Bill (HB) 3 and HB 1949, enacted by the 86th Texas Legislature, Regular Session (2019),
27 require TWC to develop rules to implement that legislation.
28

29 HB 3, §1.046 added Texas Education Code, §48.302, concerning Subsidy for High School
30 Equivalency Examination for Certain Individuals. This section requires the Texas Education
31 Agency (TEA) to enter into a memorandum of understanding with TWC when transferring funds
32 to provide a subsidy for the cost of a high school equivalency exam for individuals who are 21
33 years of age or older. Texas Education Code, §48.302 also requires TWC to develop rules
34 addressing program implementation and eligibility requirements for this subsidy program, which
35 TWC adopts in new 40 TAC Chapter 805, Subchapter E, High School Equivalency Subsidy
36 Program.
37

38 Additionally, HB 1949 amended Texas Labor Code, §315.007, Performance Incentive Funding,
39 dedicated to the process for awarding performance-based funds to Adult Education and Literacy
40 (AEL) grantees, and added Texas Labor Code, §315.007(c), (d), and (e) to include new
41 performance-based funding criteria for AEL programs to receive performance-based funds.
42 These new criteria relate to enrollment and performance benchmarks for enrollment in a high
43 school equivalency program or postsecondary ability-to-benefit program and achievement
44 measures for AEL students enrolled in such programs by the end of the program year.
45

46 Both HB 3 and HB 1949 went into effect September 1, 2019.

1
2 To implement HB 1949, on October 8, 2019, TWC's three-member Commission (Commission) approved
3 the performance-based funding criteria for AEL Program Year 2019 - 2020 (PY'19 - '20) and also approved
4 the performance criteria for performance-based funding in PY'20 - '21. Additionally, the Commission
5 approved a performance-based measure for grant recipients meeting milestones toward enrollment and the
6 performance measures required under HB 1949 and requested that rules be developed to address this
7 measure.

8
9 For the high school equivalency subsidy program, TEA appropriated \$750,000 each year of the 2020 -
10 2021 biennium. In early 2020, TEA and TWC worked with the two high school equivalency test publishers
11 approved to operate in Texas, Pearson for the GED and ETS for the HiSET, to create a process that would
12 be administratively efficient for programs managing the distribution of the subsidy at the local level to
13 eligible and test-ready individuals. On February 10, 2020, TEA and TWC entered into an interagency
14 contract to transfer funds to TWC to implement this program. While TWC moved forward to develop rules,
15 the COVID-19 pandemic impacted TWC's ability to implement the program.

16
17 On May 8, 2020, TWC submitted a letter to the Legislative Budget Board requesting any
18 unexpended and unobligated funds for the subsidy program from the current fiscal year be
19 transferable to the next fiscal year beginning September 1, 2020. In this request, TWC noted that
20 the reasons it had been unable to expend funding for this program were the lack of remote testing
21 options from Pearson and ETS (both of which were in early stages of implementing remote
22 testing guidelines) and the closures of most high school equivalency testing centers and their
23 unknown future reopening status. Additionally, TWC noted that all appropriated funds for the
24 subsidy program would be fully obligated by the end of the biennium.

25 26 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

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

29 30 **SUBCHAPTER B. ALLOCATIONS**

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

32 33 **§800.68. Adult Education and Literacy**

34 Section 800.68 is amended to add criteria for performance-based funding benchmarks for high
35 school equivalency and postsecondary ability-to-benefit enrollment and achievements in new
36 §800.68(g) and includes a definition for "postsecondary ability-to-benefit program." New
37 language allows grant recipients that meet milestones toward the performance measures outlined
38 in HB 1949 to receive performance-based funding. It further clarifies that the Commission will
39 approve the award of AEL grant funds, as is required under HB 1949 and other guidance
40 received from the legislature. Additionally, two technical edits are made to change an outdated
41 reference from Workforce Investment Act to the Workforce Innovation and Opportunity Act
42 (WIOA) and to correct a misspelled word.

43
44 As the definition of "postsecondary ability-to-benefit program" in HB 1949 does not align with
45 the federal definition for "Pell Grant Ability-to-Benefit," the rule emphasizes that this definition

1 relates to performance-based funding criteria for AEL programs and is modified to align with
2 federal AEL performance measure definitions under WIOA.

3
4 The performance funding benchmarks require that 25 percent of all participants served in the
5 program year be enrolled in a high school equivalency subsidy program or a postsecondary
6 ability-to-benefit program, and at least 70 percent of those participants who exited to achieve a
7 high school equivalency or recognized postsecondary credential.

8
9 **SUBCHAPTER F. INTERAGENCY MATTERS**

10 **TWC adopts the following new section to Subchapter F:**

11
12 **§800.206. Interagency Contract with the Texas Education Agency**

13 New §800.206 adopts by reference the terms of an interagency contract entered into with the
14 TEA, as required by Texas Education Code, §48.302, relating to the transfer of funds to
15 implement a high school equivalency subsidy program, set out in adopted 40 TAC Chapter 805,
16 Subchapter E, §§805.71 - 805.73.

17
18 TWC hereby certifies that the rules have been reviewed by legal counsel and found to be within
19 TWC's legal authority to adopt.

20
21 **PART III. PUBLIC COMMENT**

22 The public comment period closed on October 26, 2020. No comments were received.

23
24 **PART IV. STATUTORY AUTHORITY**

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

28
29 The adopted rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.
30

1 **CHAPTER 800. GENERAL ADMINISTRATION**

2 **SUBCHAPTER B. ALLOCATIONS**

3 **§800.68. Adult Education and Literacy.**

- 4
- 5 (a) AEL funds available to the Commission to provide services under the federal Adult
6 Education and Family Literacy Act (AEFLA), WIOA Title II, together with
7 associated state general revenue matching funds and federal TANF funds--together
8 with any state general revenue funds appropriated as TANF maintenance-of-effort--
9 will be used by the Commission, as set forth in subsections (b) - (f) of this section.
10 Prior to any grant recipient receiving notice of an award, the Commission shall
11 review and approve the award of grant funds to be issued under this program.
12
- 13 (b) At least 82.5 percent of the federal funds constituting the total state award of
14 AEFLA state grants--including amounts allotted to the eligible agency having a state
15 plan, as provided by AEFLA §211(c) and amounts provided to the eligible agency
16 under §243 for English Literacy/Civics (EL/Civics)--will be allocated by the
17 Commission to the workforce areas. From the amount allotted to the eligible agency
18 having a state plan, as provided by AEFLA §211(c), the Commission will allocate
19 amounts to the workforce areas according to the established federal formula, as
20 follows:
- 21
- 22 (1) 100 percent will be based on:
- 23
- 24 (A) the relative proportion of individuals residing within each workforce area
25 who are at least 18 years of age, do not have a secondary school diploma
26 or its recognized equivalent, and are not enrolled in secondary school,
27 during the most recent period for which statistics are available;
- 28
- 29 (B) an equal base amount; and
- 30
- 31 (C) the application of a hold-harmless/stop-gain procedure.
- 32
- 33 (2) No more than 5 percent of the funds expended as part of this workforce area
34 allocation shall be used for administrative costs, as defined by AEFLA,
35 provided, however, that the Special Rule outlined in AEFLA §233(b) shall
36 apply with effective justification, as appropriate.
- 37
- 38 (3) No more than 10 percent of this allocation shall be available for expenditure
39 within each workforce area on the basis of the achievement of performance
40 benchmarks, as set forth in subsection (f) of this section.
- 41
- 42 (c) At least 80 percent of the state general revenue matching funds associated with the
43 allotment of federal funds to the eligible agency having a state plan, as provided by
44 AEFLA §211(c), will be allocated by the Commission to the workforce areas
45 according to the established federal formula, as follows:

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(1) 100 percent will be based on:

- (A) the relative proportion of individuals residing within each workforce area who are at least 18 years of age, do not have a secondary school diploma or its recognized equivalent, and are not enrolled in secondary school, during the most recent period for which statistics are available;
- (B) an equal base amount; and
- (C) the application of a hold-harmless/stop-gain procedure.

(2) No more than 15 percent of the funds expended as part of this workforce area allocation shall be used for administrative costs, as defined by Commission policy.

(3) No more than 10 percent of this allocation shall be available for expenditure within each workforce area on the basis of the achievement of performance benchmarks, as set forth in subsection (f) of this section.

(d) At least 82.5 percent of the federal funds provided to the eligible agency from amounts under AEFLA §243 for EL/Civics will be allocated by the Commission among the workforce areas according to the established federal formula, as follows:

(1) The relative proportion based on:

- (A) 65 percent of the average number of legal permanent residents during the most recent 10-year period, available from U.S. Citizenship and Immigration Services data; and
- (B) 35 percent of the average number of legal permanent residents during the most recent three-year period, available from U.S. Citizenship and Immigration Services data;

(2) a base amount of 1 percent for each workforce area; and

(3) the application of a hold-harmless/stop-gain procedure.

(4) No more than 5 percent of the funds expended as part of this workforce area allocation shall be used for administrative costs, as defined by AEFLA.

(5) No more than 10 percent of this allocation shall be available for expenditure within each workforce area on the basis of the achievement of performance benchmarks, as set forth in subsection (f) of this section.

- 1 (e) At least 80 percent of federal TANF funds associated with the AEL program--
2 together with any state general revenue funds appropriated as TANF maintenance-
3 of-effort--will be allocated by the Commission to the workforce areas according to a
4 need-based formula, as follows:
5
6 (1) 100 percent will be based on:
7
8 (A) the relative proportion of the unduplicated number of TANF adult
9 recipients with educational attainment of less than a secondary diploma
10 during the most recently completed calendar year;
11
12 (B) an equal base amount; and
13
14 (C) the application of a hold-harmless/stop-gain procedure.
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16 (2) No more than 15 percent of the funds expended as part of this workforce area
17 allocation shall be used for administrative costs, as defined by federal
18 regulations and Commission policy.
19
20 (3) No more than 10 percent of this allocation shall be available for expenditure
21 within each workforce area on the basis of the achievement of performance
22 benchmarks, as set forth in subsection (f) of this section.
23
24 (f) AEL performance accountability benchmarks shall be established to coincide with
25 performance measures and reports, or other periods, as determined by the
26 Commission. Levels of performance shall, at a minimum, be expressed in an
27 objective, quantifiable, and measurable form, and show continuous improvement.
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29 (g) Performance accountability benchmarks shall:
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31 (1) include measures for high school equivalency program or ability-to-benefit
32 program enrollment and achievement, as outlined in paragraph (2) of this
33 subsection. A postsecondary ability-to-benefit program, as outlined in
34 paragraphs (2) and (3) of this subsection, is a postsecondary education or
35 training program that:
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37 (A) results in a recognized postsecondary credential; and
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39 (B) enrolls AEL eligible participants who:
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41 (i) do not have a high school diploma or recognized equivalency;
42
43 (ii) qualify for federal student financial aid eligibility under the federal
44 Ability-to-Benefit provisions enacted in §484(d) of the Higher
45 Education Act of 1965; and
46

- 1 (iii) demonstrate on an assessment instrument that the participant can
- 2 pass college-level courses with some support;
- 3
- 4 (2) include measures that require:
- 5
- 6 (A) at least 25 percent of all participants served in the program year to be
- 7 enrolled in a high school equivalency or postsecondary ability-to-benefit
- 8 program; and
- 9
- 10 (B) at least 70 percent of participants who were in a high school equivalency
- 11 or postsecondary ability-to-benefit program during the program year and
- 12 exited during the program year to achieve either a high school
- 13 equivalency or a recognized postsecondary credential; and
- 14
- 15 (3) be approved by the Commission each program year for milestones toward
- 16 meeting high school equivalency program or postsecondary ability-to-benefit
- 17 program enrollment and achievement as outlined in paragraph (2) of this
- 18 subsection.
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20 **SUBCHAPTER F. INTERAGENCY MATTERS**

21

22 **§800.206. Interagency Contract with the Texas Education Agency.**

23

24 The Texas Workforce Commission adopts by reference the terms of an interagency

25 contract entered into with the Texas Education Agency, as required by Texas Education

26 Code, §48.302, relating to the transfer of funds to implement a high school equivalency

27 subsidy program set out in Chapter 805, Subchapter E, §§805.71 - 805.73 of this title

28 (relating to High School Equivalency Subsidy Program).