

## **CHAPTER 800. GENERAL ADMINISTRATION**

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

ON **APRIL 5, 2016**, THE TEXAS WORKFORCE COMMISSION PROPOSED THE BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated Publication Date of the Proposal in the *Texas Register*: **April 22, 2016**

Estimated End of Comment Period: **May 23, 2016**

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

Subchapter B. Allocations, §800.68

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

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

The purpose of the proposed Chapter 800 rule change is to amend Agency rules to clarify that the allocation of Adult Education and Literacy (AEL) funds, pursuant to Texas Labor Code §302.062(d), includes the application of a hold-harmless/stop-gain calculation, as defined in Agency rule §800.52(7). This proposed amendment also strikes an adjacent clause that is now out of date and unnecessary.

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

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

**The Commission proposes the following amendments to Subchapter B:**

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

Section 800.68(b)(1)(C) is amended by:

- adding the stop-gain option to the hold-harmless procedure; and
- removing "(for any program year after Fiscal Year (FY) 2015)," as it is no longer relevant.

Section 800.68(c)(1)(C) is amended by:

- adding the stop-gain option to the hold-harmless procedure; and
- removing "(for any program year after Fiscal Year (FY) 2015)," as it is no longer relevant.

Section 800.68(d)(3) is amended by:

- adding the stop-gain option to the hold-harmless procedure; and
- removing "(for any program year after Fiscal Year (FY) 2015)," as it is no longer relevant.

Section 800.68(e)(1)(C) is amended by:

--adding the stop-gain option to the hold-harmless procedure; and

--removing "(for any program year after Fiscal Year (FY) 2015)," as it is no longer relevant.

### **PART III. IMPACT STATEMENTS**

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

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

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

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

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

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

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

#### Economic Impact Statement and Regulatory Flexibility Analysis

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

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

Reagan Miller, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to prevent local workforce development areas (workforce areas) from receiving substantially more funding than in a previous year, providing ample time for program capacity building.

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

### **PART IV. COORDINATION ACTIVITIES**

In the development of these rules for publication and public comment, the Commission sought the involvement of Texas' 28 Boards. The Commission provided the concept paper regarding these rule amendments to the Boards for consideration and review on November 3, 2015. The

Commission also conducted a webinar with Board executive directors and Board staff on November 12, 2015, to discuss the concept paper. During the rulemaking process, the Commission considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

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

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

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

## CHAPTER 800. GENERAL ADMINISTRATION

### SUBCHAPTER B. ALLOCATIONS

#### §800.68. Adult Education and Literacy.

- (a) AEL funds available to the Commission to provide services under the federal Adult Education and Family Literacy Act (AEFLA), WIA Title II, together with associated state general revenue matching funds and federal TANF funds--together with any state general revenue funds appropriated as TANF maintenance-of-effort--will be used by the Commission, as set forth in subsections (b) - (f) of this section.
- (b) At least 82.5 percent of the federal funds constituting the total state award of AEFLA state grants--including amounts allotted to the eligible agency having a state plan, as provided by AEFLA §211(c) and amounts provided to the eligible agency under §243 for English Literacy/Civics (EL/Civics)--will be allocated by the Commission to the workforce areas. From the amount allotted to the eligible agency having a state plan, as provided by AEFLA §211(c), the Commission will allocate amounts to the workforce areas according to the established federal formula, as follows:
  - (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 ~~(for any program year after Fiscal Year (FY) 2015)~~.
  - (2) 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, provided, however, that the Special Rule outlined in AEFLA §233(b) shall apply with effective justification, as appropriate.
  - (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.
- (c) At least 80 percent of the state general revenue matching funds associated with the allotment of federal funds to the eligible agency having a state plan, as provided by AEFLA §211(c), will be allocated by the Commission to the workforce areas according to the established federal formula, as follows:

- (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 ~~(for any program year after FY 2015)~~.
  - (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 ~~(for any program year after FY 2015)~~.
  - (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.

- (e) At least 80 percent of federal TANF funds associated with the AEL program-- together with any state general revenue funds appropriated as TANF maintenance-of-effort--will be allocated by the Commission to the workforce areas according to a need-based formula, as follows:
- (1) 100 percent will be based on:
    - (A) the relative proportion of the unduplicated number of TANF adult recipients with educational attainment of less than a secondary diploma during the most recently completed calendar year;
    - (B) an equal base amount; and
    - (C) the application of a hold-harmless/[stop-gain](#) procedure ~~(for any program year after FY 2015)~~.
  - (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 federal regulations and 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.
- (f) AEL performance accountability benchmarks shall be established to coincide with performance measures and reports, or other periods, as determined by the Commission. Levels of performance shall, at a minimum, be expressed in an objective, quantifiable, and measureable form, and show continuous improvement.