

ADOPTED RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*. THIS DOCUMENT WILL NOT HAVE ANY SUBSTANTIVE CHANGES BUT IS SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE *TEXAS REGISTER*.

**TITLE 40. SOCIAL SERVICES AND ASSISTANCE
PART XX. TEXAS WORKFORCE COMMISSION
CHAPTER 835. SELF-SUFFICIENCY FUND**

The Texas Workforce Commission (Commission) adopts the amendment to Chapter 835, Subchapter A. General Provisions Regarding the Self-Sufficiency Fund, §835.2 Definitions, without changes as published in the July 25, 2003, issue of the *Texas Register* (28 TexReg 5847). The text will not be republished.

The purpose of the adopted rules is to expand the eligibility criteria for the population to be trained through the Self-Sufficiency Fund (SSF) program.

Background. Employers have expressed the need for increased job training for lower level incumbent workers. Currently, the SSF rules limit eligibility to Temporary Assistance for Needy Families (TANF) recipients, TANF applicants who have been referred by the Texas Department of Human Services to attend a Workforce Orientation for Applicants (WOA), and food stamp households with dependent children.

Federal TANF law and regulations give states broad flexibility to make program and funding decisions that they believe will best support the goals of the program and their individual circumstances. The U.S. Department of Health and Human Services has indicated that states may set different financial eligibility criteria for different types of benefits in order to increase the number of families they help to become self-sufficient. For example, states may set higher income standards to establish eligibility for transitional benefits (i.e., for those no longer receiving cash assistance) in order to provide those families child care, transportation, and other job retention and advancement services. Therefore, the Commission will establish a new income level for Self-Sufficiency eligibility to promote and provide employer-driven training opportunities.

In order to maximize the flexibility of the eligibility criteria, needy parents, both custodial and non-custodial, will be considered eligible if their annual income is equal to or below \$37,000. The Commission is proposing this annual income limit because it approximates 200 percent of the Federal Poverty Guidelines for a family of four. Utilizing the wages of the incumbent worker will allow for a simplified identification of individuals who are eligible for SSF training.

If an employee is earning an hourly wage, the wage earned at the time eligibility is being determined must be converted to an annual wage to see if it is below the income threshold. Therefore, the employee's hourly wage is multiplied by 2,080 hours (2,080 hours is calculated based on 52 weeks per year multiplied by 40 hours per week) and a monthly wage by 12 months. For example, if a worker is earning \$12/hour, the wage is multiplied by 2,080, which equates to

an annual income of \$24,960. If a worker is earning \$2,400/month, the wage is multiplied by 12, which equates to an annual income of \$28,800. Under both of these scenarios, the worker is eligible for SSF training.

In Subchapter A, Section 835.2, the rule contains a revised definition for "individual at risk of becoming dependent on public assistance."

Coordination with Stakeholders: Prior to proposing these rule amendments, the Commission circulated a policy concept paper outlining the changes to the Board chairs, members, and executive directors, and the Workforce Leadership of Texas (WLT) Policy Committee. In addition, Commission staff, during a conference call with the Board executive directors, and at a WLT Policy Committee meeting, reviewed the policy concept paper and requested feedback from the Boards, on the draft policy changes.

Public comments on the proposed rules were received from the Permian Basin Workforce Development Board and the West Central Texas Workforce Development Board.

The comment summaries and responses are as follows.

Comment: One commenter supported the proposed rule changes because of the flexibility it provides.

Response: The Commission appreciates the commenter taking the time to express support for the proposed rule changes.

Comment: Regarding §835.2(6), one commenter believes that establishing a single wage criteria based on annual income, rather than on family size, is inconsistent with other Commission-funded programs. The commenter further suggested that the formula presented in the preamble for calculating income based on an individual's hourly wage multiplied by 2,080 hours is not as accurate as a calculation based on actual, verified wages.

Response: The Commission recognizes the need to promote consistency, particularly with Board-administered programs. However, because this is a state-administered program, which partners directly with employers, the Commission's intent was to lessen the burden on employers who are applying for these training services. Therefore, the Commission proposed a simplified method, as allowed under federal law and regulations, to identify TANF-eligible parents who qualify for job retention services.

With regard to the concern that an individual's hourly wage multiplied by 2,080 hours is not as accurate as a calculation based on actual, verified wages, the Commission clarifies that the hourly wage that is used in any calculation must be verified by the employer. In addition, the 2,080 hour figure is based upon a standard figure used to translate an hourly wage into an annual wage.

In order to simplify the income eligibility determination process, the Commission proposes utilizing the wages of the trainee. This supports an employer friendly system that allows the easy identification of eligible trainees.

The amendments are adopted under Texas Labor Code, §301.061 and §309.004, 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 Commission activities and services.

Texas Labor Code, Title 4 and particularly Chapter 301, Chapter 302, and Chapter 309 will be affected by the amendments as well as Texas Human Resources Code, Chapter 31 regarding public assistance.

CHAPTER 835. SELF-SUFFICIENCY FUND

SUBCHAPTER A. GENERAL PROVISIONS REGARDING THE SELF-SUFFICIENCY FUND

§835.2. Definitions.

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

- (1) Community-based organization (CBO)--A private nonprofit organization that is representative of a community or a significant segment of a community and that provides education, vocational education or rehabilitation, job training, or internship services or programs. The term includes a neighborhood group or corporation, union-related organization, employer-related organization, faith-based organization, tribal government, or organization serving Native Americans. The CBO must be certified as a 501(c)(3) nonprofit organization under the IRS Code of 1986, as amended. A CBO providing services, which are regulated by the state, must provide evidence of required certification, license or registration.
- (2) Customized job training project--A project designed for a business, business consortium, or trade union in partnership with a public community or technical college, state extension service, TEEX or community-based organization for the purpose of providing specialized workforce training to prospective employees of the business or business consortium, or members of the trade union with the intent of expanding the workforce.
- (3) Director--The Executive Director of the Texas Workforce Commission.
- (4) Texas Engineering Extension Service (TEEX)--A higher education agency and service established by the Board of Regents of the Texas A&M University System.

- (5) Grant recipient--A public community or technical college, community-based organization, state extension service, or TEEEX awarded a grant from the Self-Sufficiency Fund.
- (6) Individual at risk of becoming dependent on public assistance--An individual who is a member of a food stamp household with dependent children, a TANF applicant who has been referred to a Board contractor by the Texas Department of Human Services (DHS) to attend a Workforce Orientation for Applicants session in accordance with DHS rule 40 TAC §3.7301, or a parent, including a noncustodial parent, whose annual wages are at or below \$37,000.
- (7) Private partner--A person, sole proprietorship, partnership, corporation, association, consortium, or private organization that enters into a partnership for a customized job training project with a public community or technical college, a community-based organization, state extension service, or TEEEX.
- (8) Public community college--A state funded two-year educational institution primarily serving its local taxing district and service area in Texas and offering vocational, technical and academic courses for certification or associate degrees.
- (9) Public technical college--A state funded coeducational institution of higher education offering courses of study in vocational and technical education, for certification or associate degrees.
- (10) Self-Sufficiency--Employment with wages reasonably calculated to make the employee independent of financial assistance under Texas Human Resources Code, Chapters 31, 33 and 34.
- (11) State extension service-- An education service that provides technical and vocational training and is sponsored by a higher education agency regulated by the Texas Higher Education Coordinating Board.
- (12) TANF recipient--A person who receives financial assistance under Texas Human Resources Code, Chapters 31, 33 and 34.
- (13) Trade union--An organization, agency or employee committee, in which employees participate and which exists for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.
- (14) Training provider--Any public community or technical college, community-based organization, state extension service, or TEEEX that provides training; or any person, sole proprietorship, partnership, corporation, association, consortium, governmental subdivision or public or private organization with whom a public community or

technical college, community-based organization, state extension service, or TEEEX has subcontracted to provide training.