

The Texas Workforce Commission (Commission) adopts amendments to §§800.51 - 800.54, 800.57, 800.58, 800.61 and 800.62 and the repeal of §§800.55, 800.56, and 800.59, relating to allocations and funding, without changes to the proposed text as published in the October 27, 2000 issue of the *Texas Register* (25 TexReg 10711). The text will not be republished.

Concurrent with the amendments and repeal, the Commission is adopting the review of the sections being amended in Chapter 800, Subchapter B, pursuant to Texas Government Code §2001.039. No comments were received on the proposed review.

Purpose: The purpose of the adopted amendments and repeals is to update the allocations and funding rules consistent with the preliminary review of the rules. The Commission's allocations and funding rules set forth the methods or criteria used by the Commission to allocate or utilize funds primarily using the need-based formulas or other formula set forth in federal and state statutes applicable to the services to be provided.

The specific changes to the rules are generally for the following purposes:

- (1) replacing the reference to "JOBS/TANF" with "Choices" throughout the subchapter,
- (2) clarifying the roles of the "Commission" and "Agency" throughout the subchapter;
- (3) changing the format of the beginning of each rule to make the style more consistent and parallel;
- (4) removing the definitions of "allocation" and "workforce area" so those definitions may be incorporated in the future into §800.2 for applicability to all Commission chapters contained in Part 20;
- (5) removing, in §800.52, the definition of "average net unit rate" because it is no longer needed due to the concurrent repeal of §800.56;
- (6) removing §800.55 because all Job Training Partnership Act (JTPA) funds have been allocated and the JTPA was repealed and replaced with the new Workforce Investment Act;
- (7) removing §800.56 because the rule was no longer needed after §800.58 was adopted in January of 1999;
- (8) adding within §800.58(b) the reference to the Welfare to Work Governor's Reserve funds to make clear that the criteria set forth in §800.58(b) are used as the method of allocating those funds;
- (9) removing §800.58(f)(3) because the rule repeats the provisions relating to priorities for child care services that are contained in §§809.221 and 809.225 regarding Child Care General Funds Management and Continuity of Care;
- (10) removing §800.58(g) because the reason for the subsection no longer exists;
- (11) removing §800.59 to relocate the provisions into the more general location within §800.51; and
- (12) removing §800.61(b) because of guidance from the United States Department of Labor that indicated that the provision is not required.

No comments received on the proposed amendments and repeal.

For information regarding the Texas Workforce Commission please visit our web page at www.texasworkforce.org.

The rules are adopted under Texas Labor Code §§301.061 and 302.002, 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 rules affect Texas Labor Code, Titles 2 and 4 as well as Texas Government Code Chapter 2308.

SUBCHAPTER B. ALLOCATION AND FUNDING

§800.51. Scope and Purpose

(a) The purpose of this rule is to interpret Texas Labor Code, §302.062, as enacted in House Bill 1863, 74th Legislature (1995), relating to the allocation of available funds for workforce training and services from the Texas Workforce Commission to workforce areas. It is the intent of the Commission to allocate funds to workforce areas for the purpose of meeting or exceeding statewide performance measures as set forth in the state General Appropriations Act. This subchapter sets forth the level required by law to be allocated to workforce areas. The Commission is committed, whenever possible, to allocating an amount of funds available for workforce training and services greater than the minimum level set by law.

- (b) Funds allocated or reallocated under this subchapter will only be made available to the local boards under the terms of a properly executed contract between a certified local board with an approved plan and the Commission.
- (c) The allocation formulas described in this subchapter will only be applicable for allocations and executed contracts for a complete state fiscal year. For contract periods of less than a complete state fiscal year, the allocated amounts will be negotiated between the Commission and the Board, based upon the remaining months of the state fiscal year.
- (d) Subsections (a)-(c) of this section shall apply to all sections contained in this subchapter unless a section specifically states otherwise.
- (e) Funds available to the Commission that are not otherwise allocated under 40 TAC Chapter 800, Subchapter B, may be used by the Commission for purposes authorized by state and federal laws and regulations.

§800.52. Definitions

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

- (1) All-family participation rate--The percentage of all families receiving TANF benefits that a state must engage in an approved work activity for a specified number of hours per week as provided by the Personal Responsibility and Work Opportunities Reconciliation Act of 1996, §407.
- (2) Two-parent family participation rate--The percentage of two-parent families receiving TANF benefits that a state must engage in an approved work activity for a specified number of hours per week as provided by the Personal Responsibility and Work Opportunities Reconciliation Act of 1996, §407.

§800.53. Choices

- (a) Funds available to the Commission to provide Choices services will be allocated to the workforce areas using a need-based formula, in order to meet state and federal requirements, as set forth in subsection (b) of this section.
- (b) At least 80% of the Choices funds, excluding Investment in Long-Term Success for TANF recipients components, will be allocated to the workforce areas on the basis of:
 - (1) the relative proportion of the total number of two-parent families with Choices work requirements residing within the workforce area to the statewide total number of two-parent families with Choices work requirements, and
 - (2) the relative proportion of the total number of single-parent families with Choices work requirements residing within the workforce area to the statewide total of single-parent families with Choices work requirements.
 - (3) Funding will be divided between paragraphs (1) and (2) of this subsection based on the need to meet federal participation rates for both the two-parent families and all families, as required by federal law.
- (c) No more than 10% of Choices funds expended as part of a workforce area's allocation shall be used for administrative costs, as defined by the appropriate federal regulations and Commission policy.

§800.54. Food Stamp Employment and Training

- (a) Funds available to the Commission to provide FS E & T services under 7 U.S.C.A §2015(d) will be allocated to the workforce areas using a need-based formula, as set forth in subsection (b) of this section.
- (b) At least 80% of the FS E & T funds will be allocated to the workforce areas on the basis of the relative proportion of the total unduplicated number of mandatory work registrants receiving food stamps residing within the workforce area to the statewide total unduplicated number of mandatory work registrants receiving food stamps.
- (c) No more than 10% of the funds expended as part of a workforce area's allocation shall be used for administrative costs, as defined by the appropriate federal regulations and Commission policy.

§800.57. Employment Services

- (a) Funds available to the Commission to provide Employment Services under §7(a) of the Wagner-Peyser Act (29 U.S.C.A. Chapter 4B) will be utilized by the Commission as set forth in subsection (b) of this section.
- (b) At least 80% of the Employment Services funds under §7(a) of the Wagner-Peyser Act (29 U.S.C.A. Chapter 4B, including §49(c)) will be utilized by the Commission within the workforce areas according to the established federal formula, as follows:

- (1) Two-thirds will be based on the relative proportion of the total civilian labor force residing within the workforce area to the statewide total civilian labor force, and
- (2) One-third will be based on the relative proportion of the total number of unemployed individuals residing within the workforce area to the statewide total number of unemployed individuals.

§800.58. Child Care

(a) Funds available to the Commission for child care services will be allocated to the workforce areas using need-based formulas, as set forth in this section.

(b) Child Care and Development Fund (CCDF) Mandatory Funds authorized under the Social Security Act §418(a)(1), as amended, together with state general revenue Maintenance of Effort (MOE) Funds, Social Services Block Grant funds, Welfare-to-Work funds reserved by the Governor, TANF funds, and other funds designated by the Commission for child care (excluding any amounts withheld for state-level responsibilities) will be allocated on the following basis:

- (1) 50% will be based on the relative proportion of the total number of children under the age of five years old residing within the workforce area to the statewide total number of children under the age of five years old, and
- (2) 50% will be based on the relative proportion of the total number of people residing within the workforce area whose income does not exceed 100% of the poverty level to the statewide total number of people whose income does not exceed 100% of the poverty level.

(c) Child Care and Development Fund (CCDF) Matching Funds authorized under the Social Security Act § 418(a)(2), as amended, together with state general revenue matching funds and estimated appropriated receipts of donated funds, will be allocated according to the relative proportion of children under the age of 13 years old residing within the workforce area to the statewide total number of children under the age of 13 years old.

(d) Child Care and Development Fund (CCDF) Discretionary Funds authorized under the Child Care and Development Block Grant Act of 1990 § 658B, as amended, will be allocated according to the relative proportion of the total number of children under the age of 13 years old in families whose income does not exceed 150% of the poverty level residing within the workforce area to the statewide total number of children under the age of 13 years old in families whose income does not exceed 150% of the poverty level.

(e) For Food Stamp Employment and Training child care, funds will be allocated among workforce areas on the basis of the relative proportion of the total number of children aged 6-12 years in households of mandatory food stamp work registrants residing within the workforce area to the statewide total number of children aged 6-12 years in households of mandatory food stamp work registrants.

(f) The following provisions apply to the funds allocated in subsections (b) - (e) of this section:

- (1) No more than 5% of the total expenditure of funds may be used for administrative expenditures as defined in federal regulations contained in 45 Code of Federal Regulations § 98.52, as may be amended unless the total expenditures for a workforce area are less than \$5,000,000. If a workforce area has total expenditures of less than \$5,000,000, then no more than \$250,000 may be used for administrative expenditures.
- (2) At least 4% of the total expenditure of funds must be used for activities to improve the quality of child care as defined in federal regulations contained in 45 Code of Federal Regulations § 98.51, as may be amended. At the local workforce development board's (Board) discretion, more than 4% of the expenditures may be used for these activities.
- (3) Transitional clients who are eligible for child care for their children and Choices clients who are eligible for child care for their children shall be served on a priority basis to enable parents to participate in work, education, or training activities.
- (4) Sufficient funds must be used for direct child care services to ensure Commission-approved performance targets are met.
- (5) The Board shall comply with any additional requirements adopted by the Commission or contained in the Board contract.

§ 800.61. Welfare to Work

(a) Welfare to Work funds available to the Commission for the Welfare to Work allowable activities as referenced in Chapter 839 of this title will be allocated by the Commission to the workforce areas according to the formula set forth in subsection (b) of this section.

(b) At least 85% of the federal funds available to the Commission for the Welfare to Work allowable activities as referenced in Chapter 839 of this Title will be allocated by the Commission to the workforce areas according to the formula, as follows:

- (1) 50% of these federal funds will be allocated based on the relative number by which the population in the area below poverty exceeds 7.5% of the total population (referred to as the poverty factor), and
- (2) 50% of these federal funds will be allocated based on the relative number of adults residing in the areas receiving assistance under TANF or the predecessor statute for at least 30 months (referred to as the long-term TANF factor.)

(c) At least 85% of any unencumbered general revenue funds appropriated or otherwise made available to the Commission for the sole purpose of providing cash match for the Welfare to Work allowable activities shall be allocated based upon the same allocation formula as in subsection (a) of this section.

(d) No more than 10% of the funds expended as part of a workforce area's allocation shall be used for administrative costs, as defined by the appropriate federal regulations and Commission policy.

(e) Section 800.51(a) and (b) of this title (relating to Allocation and Funding) do not apply to this section.

§ 800.62. School-to-Careers

(a) The purpose of this section is to establish a method of allocating funds received by the Texas Workforce Commission (Commission) under a federal grant pursuant to the School-to-Work Opportunities Act as codified at 20 U.S.C.A. §§6141 et seq. (the Act) to local partnerships for implementation of School-to-Careers activities. The purpose of School-to-Careers is to assist local partnerships in developing local School-to-Careers activities that engage interested youths in the lifelong acquisition of knowledge and skills necessary to pursue meaningful, challenging and productive careers in high-skill, high-wage jobs. Subsections (a) - (c) of § 800.51 of this subchapter (relating to Allocation and Funding) do not apply to funds awarded pursuant to this section.

(b) The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Local partnership--A local committee in a workforce area or group of workforce areas or advisory committee of a local workforce development board (workforce board), in areas where the workforce board has been certified, that is responsible for developing local School-to-Careers activities and whose membership is in accordance with the Act. Local partnerships are comprised typically of interested students; parents; local educators, including secondary and postsecondary educators; local employers and labor representatives; local elected officials, including school boards; and others as detailed in the Act.

(2) School-to-Careers activities--Voluntary activities that facilitate understanding by interested students and their parents of expectations of employers and community professionals and provide multiple opportunities for interested students to experience success in meeting those expectations in the workplace and in the community.

(3) Substate application--An application submitted by a local partnership to the Commission to request funds for implementation of School-to-Careers activities.

(c) A local partnership shall receive a base amount each year as follows to implement basic School-to-Careers activities.

(1) In the second, third, and fourth years of the grant, the base amount is estimated at \$75,000 or the amount as determined by the Commission taking into consideration available funds.

(2) In the fifth year of the grant, the base amount is estimated at \$45,000 or the amount as determined by the Commission taking into consideration available funds.

(d) After allocating the base amount, the Commission shall allocate the remaining funds according to a need-based method which uses as the primary factor each local partnership's relative share of the state's student population. The Commission may reduce the need-based allocation to any local partnership that does not demonstrate or maintain satisfactory progress in the previous year, relative to the following factors:

- (1) the overall quality of the plan submitted;
- (2) the readiness of the local partnerships to implement the plan or the ability to continue implementing the plan;
- (3) the progress made by the local partnerships in accomplishing specific objectives to date; and
- (4) the relevant additional factors as deemed appropriate for consideration by the Commission that bear upon the ability of the local partnerships to meet their goals.

(e) The Commission shall allocate and reallocate funds under this section only to a local partnership that meets all of the following requirements:

- (1) the substate applicant submitted a complete application, which the Commission approved;

- (2) the substate application contained assurances that the School-to-Careers activities shall be implemented only if there is strong local school board control, complete student choice, and informed parental involvement;
- (3) the local partnership and the Commission properly executed a contract for implementing the School-to-Careers activities; and

(4) the local partnership demonstrated satisfactory progress in fulfilling the previous year's contract.

(f) To facilitate the transition to the need-based method of allocations, the Commission may use a portion of the state's share of the second year grant to offset any reduction in allocation to local partnerships in the second year if the implementation of the need-based method would reduce the local partnership's second year allocation.

(g) The Commission may allocate additional funds from the state's share of the grant according to criteria established at the discretion of the Commission.

(h) Notwithstanding any other provision of this section, the level of funding allocated to a local partnership may be modified or reallocated by the Commission for one or more of the following purposes:

- (1) to ensure compliance with state and federal requirements applicable to the state,
- (2) to ensure full utilization of the funding, or
- (3) to ensure appropriate progress in accomplishing the state's responsibilities under the School-to-Careers implementation grant.

(i) If it is determined by the Commission that a local partnership will not fulfill its responsibilities under the substate grant, the Commission may declare the local partnership non-responsive and accept an application from a newly constituted local partnership or other entity meeting the criteria of the Act, established in accordance with guidance from the Commission, to proceed with implementation of the School-to-Careers activity in the workforce area. Section 800.51(e), of this title (relating to Funds Not Allocated), and Subchapter C of this chapter (relating to Reallocation of Funds), shall not apply to this section.

(j) State administrative costs may not exceed ten percent of the grant award or as otherwise permitted by the Act. The repeals are adopted under Texas Labor Code §301.061 and §302.002, 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 rules affect Texas Labor Code, Titles 2 and 4 as well as Texas Government Code Chapter 2308.

§800.55. Job Training Partnership Act Program.

§800.56. Child Care Services

§800.59. Funds Not Allocated