

## **CHAPTER 800. GENERAL ADMINISTRATION**

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

Estimated date of publication in the *Texas Register*: February 21, 2014

The rules will take effect: February 24, 2014

The Texas Workforce Commission (Commission) adopts the following new sections to Chapter 800, relating to General Administration, *without* changes, as published in the November 29, 2013, issue of the *Texas Register* (38 TexReg 8590):

Subchapter B. Allocations, §800.68 and §§800.78 - 800.80

The Commission adopts amendments to the following sections of Chapter 800, relating to General Administration, *without* changes, as published in the November 29, 2013, issue of the *Texas Register* (38 TexReg 8590):

Subchapter A. General Provisions, §800.2

Subchapter B. Allocations, §800.51, §800.52, §800.71, and §800.72

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

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

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

SB 307 mandates that the Commission:

- develop, administer, and support a comprehensive statewide adult education program and coordinate related federal and state programs for the education and training of adults;
- develop the mechanism and guidelines for the coordination of comprehensive adult education and related skills training services for adults with other entities, including public agencies and private organizations, in planning, developing, and implementing related programs;
- administer adult education funding;
- prescribe rules and standards for teacher certification and accreditation; and
- develop a standardized assessment mechanism, and monitor and evaluate educational and employment outcomes of students who participate in AEL programs.

In addition, SB 307 mandates that the Agency use a competitive procurement process to award contracts to service providers of local education programs. To complete a competitive procurement and have contracts in place by July 2014, a January 2014 target date has been set for the adoption of new Chapter 805, regarding AEL programs.

Further, to fully incorporate AEL programs into the Agency's administrative oversight framework, amendments are necessary in Chapter 802, regarding Integrity of the Texas Workforce System. To ensure a seamless transition of rules, the Chapter 802 amendments and new Chapter 805 are adopted concurrently with this rulemaking.

To better understand the major issues currently facing adult education, the Commission held a series of nine public meetings across the state to hear from stakeholders concerning the transfer of the AEL programs from TEA to the Agency, and to gather input about what is currently working well and where there is opportunity for improvement. AEL stakeholder communication has continued throughout the transition, and the Commission greatly values the thoughts, recommendations, and suggestions provided by the AEL stakeholder community.

The purpose of the adopted Chapter 800 amendments is to:

--set forth rules for the AEL program regarding:

--allocations;

--midyear deobligation of funds;

--voluntary deobligation of funds; and

--make necessary technical changes.

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

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

### **SUBCHAPTER A. GENERAL PROVISIONS**

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

#### **§800.2. Definitions**

New §800.2(1) defines "Adult Education and Literacy (AEL)" as services designed to provide adults with sufficient basic education that enables them to effectively:

--(A) acquire the basic educational skills necessary for literate functioning;

--(B) participate in job training and retraining programs;

--(C) obtain and retain employment; and

--(D) continue their education to at least the level of completion of secondary school and preparation for postsecondary education.

New §800.2(15)(J) defines the AEL program year as July 1 - June 30.

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

## **SUBCHAPTER B. ALLOCATIONS**

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

### **§800.51. Scope and Purpose**

Section 800.51(b) adds "AEL grant recipient with an approved contract with the Agency" as an entity subject to the provisions regarding scope and purpose of this subchapter.

Section 800.51(c) adds "an AEL grant recipient" as an entity with which the Commission will negotiate allocated amounts for contract periods of less than a complete year, based on the remaining months of the program year.

### **§800.52. Definitions**

Section 800.52(4) adds "an AEL grant recipient" to the definition of "contract period."

Section 800.52(5) adds "an AEL grant recipient" to the definition of "deobligation."

Section 800.52(8) adds "an AEL grant recipient" to the definition of "monthly expenditure report."

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

New §800.68 sets forth the allocation methodology for AEL funds. SB 307 provides that funds may be allocated pursuant to a need-based formula that ensures compliance with federal requirements and also achieves integrated education and training. In addition, stakeholders expressed support for the development of strategies to advance the linkage between adult education and workforce training, as well as the use of innovation in the delivery, support, and expansion of AEL services in Texas.

Historically, TEA has only reserved federal funds to support state administration and leadership activities. Federal state leadership funds may be used to support or facilitate linkages between adult education and training, including professional development and technical assistance, program coordination and integration, and coordination with existing support services, such as transportation and child care. However, these funds specifically cannot be used for the delivery of technical skills training.

Each year, after funds had been set aside for state administration and leadership purposes, TEA allocated state and federal AEL funds to grantees largely based upon prior funding levels, proportionate share of need, and performance. Each grantee's total allocation comprised a base allocation and a performance allocation. Historically, base allocations remained constant from year to year while performance allocations varied based on individual program performance. Stakeholders expressed concerns that the allocation formulas did not truly determine proportionate share of need, were difficult to understand, and included overly complex performance methodology.

It is the Commission's intent to provide a clear, easily understood allocation methodology in rule to alleviate these concerns and to clarify any issues surrounding transparency of the methodology or the logic of the distribution of available funds.

Based on legislative authorization and stakeholder input, there is a clear need to fund the development and piloting of innovative methods for delivering services, including the identification of effective uses of technology. Coupled with ensuring that funding is available to meet SB 307's expectation that integrated adult education and skills training models be developed, the rules provide that in addition to the federal funds allowed for state leadership and administration--12.5 percent for state leadership activities and 5 percent for administration--a maximum amount of state adult education funds and federal Temporary Assistance for Needy Families (TANF) funds also may be used for those purposes. Consistent with other workforce funding sources, an amount not to exceed 20 percent of state and federal TANF funds can be reserved for state administration and leadership activities.

The Commission recognizes that local workforce development areas (workforce areas) will require a meaningful investment in capacity-building efforts to support the seamless alignment of adult education and literacy and technical training for industry certifications and degrees. Capacity-building efforts such as curriculum development, technical assistance, professional development, and demonstration projects using innovative concurrent training models will support local system change and alignment. The Commission's goals for investments in technology and other capacity-building efforts from a statewide perspective are increases in direct service delivery over time and improvements in the overall outcomes for students. Thus, the Commission believes that reserving an amount not to exceed 20 percent of state and federal TANF funds may be needed for state leadership purposes to adequately support these efforts.

For federal Adult Education and Family Literacy Act (AEFLA) state grant funds, administrative costs are limited to 5 percent of the amounts provided to AEL service providers, unless there is effective justification for the application of the Special Rule in AEFLA §233(b). For state AEL matching funds and federal TANF funds included in the AEL program, administrative costs will be limited to 15 percent of amounts provided to AEL service providers.

New §800.68 sets forth the allocation methodologies for both federal and state AEL funds, federal English Literacy/Civics (EL/Civics) funds, federal TANF funds, and state general revenue appropriated as TANF maintenance-of-effort, after setting aside funds for state administration and state leadership. The methodologies mirror the federal methodologies used to allocate funds to the states, as applicable. Texas Labor Code §302.062 provides that if the Commission block grants funds for workforce training, employment services, and support services--and if the funds are allocated to the state through the application of established formulas--then the Commission must allocate amounts available across the state to workforce areas (which are geographic constructs and are not synonymous with Local Workforce Development Boards (Boards)) using the same formula used to provide the funds to the state. This is the practice followed for most of the Commission's block-granted programs. The Commission is proposing the block granting of AEL funds to the workforce areas based precisely on the methodology and data the U.S. Department of Education's Office of Vocational and Adult Education (OVAE) uses to allocate the funds to Texas. A proportion of these allocations will become available through the achievement of performance benchmarks, which will reward the performance of AEL service providers.

OVAE provides federal AEFLA state grant funds to states using a 90 percent "hold-harmless" procedure (i.e., the proportion of the state grant to the total of all state grants is at least 90 percent of the prior year's proportion), and the Commission proposes allocating AEL funds using a hold-harmless procedure. (Additionally, Texas Labor Code §302.062 provides that the 90 percent hold-harmless provision applies to block grant allocations.)

New §800.68(a) states that AEL funds available to the Commission to provide services under AEFLA, Workforce Investment Act Title II, together with associated state general revenue matching funds and federal TANF funds--along 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.

New §800.68(b) provides that 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 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 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 must be used for administrative costs, as defined by AEFLA, provided, however, that the Special Rule outlined in AEFLA §233(b) must apply with effective justification, as appropriate.

--(3) No more than 10 percent of this allocation must 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.

New §800.68(c) stipulates that 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 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 must be used for administrative costs, as defined by Commission policy.
- (3) No more than 10 percent of this allocation must 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.

New §800.68(d) provides that 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 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 must be used for administrative costs, as defined by AEFLA; and
- (5) No more than 10 percent of this allocation must 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.

New §800.68(e) provides that 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 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 must be used for administrative costs, as defined by federal regulations and Commission policy.
- (3) No more than 10 percent of this allocation must 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.

New §800.68(f) states that AEL performance accountability benchmarks must be established to coincide with performance measures and reports, or other periods, as determined by the Commission. Levels of performance must, at a minimum, be expressed in an objective, quantifiable, and measureable form, and show continuous improvement.

**Comment:** Seventeen commenters expressed concern that a significant reduction in AEL funds available to their workforce areas, per the allocation methodology set forth in §800.68, would harm the quality and availability of needed adult education services in their respective workforce areas.

**Response:** The Commission believes funds should be allocated in the same manner as federal AEL funds are allocated to Texas and based on methodologies that are clearly outlined and commensurate with the need for AEL services in each part of the state. Using a different allocation method than used in prior years will result in initial shifts in funds distributed across the state, with some workforce areas experiencing an increase in funding and some experiencing a decrease. While this may result in some workforce areas having less capacity to serve the same number of individuals needing adult education services as in the past, possible capacity decreases are balanced by the ability gained by other workforce areas to increase their capacity to serve the historically unmet needs of their eligible population. Thus, the Commission does not foresee an impact on the number of individuals who may be served statewide.

The Commission is keenly focused on performance to ensure that funds are used effectively to serve customers and produce positive results. Including performance benchmarks and performance standards highlights the Commission's expectation that grantees will maintain or exceed performance standards through effective service delivery and innovation. Further, the rules allow funds to be deobligated, including voluntarily, if they are not being used effectively to serve individuals needing AEL services at expected levels; however, the Commission will work diligently with grantees to provide technical support and assistance in developing strategies to ensure individuals are receiving needed services, thereby mitigating risks.

Whether in the past or under current budget conditions, the need for AEL services exceeds the available resources in Texas and no workforce area is funded to fully meet these needs. The Commission expects that AEL grant recipients will identify and coordinate with all available organizations and programs in their workforce areas to expand and leverage services delivered beyond those that may be provided solely with AEL funding.

**Comment:** Two commenters suggested that TWC consider applying the AEL allocation "hold harmless" provision to the PY'14 allocations, rather than the current rule proposal that such hold harmless provisions apply to allocations only after PY'14 (i.e., beyond FY'15).

**Response:** The Commission believes the allocation methodology is fair, complies with Texas Labor Code, and aligns with the methodology used to award federal AEL funds to Texas. While some workforce areas will experience a reduction in funding, others will receive additional funds commensurate with the population-based level of need for AEL services in the workforce area. The application of a hold harmless provision would result in workforce areas that are otherwise entitled to additional funding not receiving as much based on need.

In addition, hold harmless provisions cannot apply until after the PY'14 (period beginning July 1, 2014) allocations because allocations will be made to workforce areas; prior to PY'14, allocations were made in accordance with fiscal agent service delivery areas established based on past practices. The Commission's forthcoming competitive procurement makes funding available to workforce areas to allow improved integration of education and training of adults.

**Comment:** Eight commenters expressed concern with the proposed set-aside of "state leadership funds" from EL/Civics, state general revenue, and TANF MOE, stating that an increase in funding for state leadership activities will result in decreased funding for direct services. The commenters requested that funding formulas maximize the delivery of direct services and innovation in program delivery.

**Response:** The Commission has noted its intent to use funding reserved for administration and state leadership activities that will enhance service delivery and support provided to grantees. The Commission is committed to administering all AEL resources as efficiently as possible, with the goal of identifying innovation and processes that will expand AEL services and the outcomes for those receiving the services (e.g., distance learning investments and employer site-based literacy programs). Generally, the mock allocations generated based on the proposed methodologies show the projected amounts available for FY'15 are not significantly different than funding levels in FY'14 or FY'13, factoring in the effect of the FY'13 federal sequestration and the fact that carry-over funding is not included in the allocations. State leadership funds allow the Commission to support innovation and initiatives that reflect local integrated service delivery models consistent with the legislature's vision for the program.

**Comment:** Two commenters expressed concern with a lack of a volume correction for headcount or contact hours in the funding formula, creating drastic funding decreases from workforce areas of high population density that currently carry the majority of the program enrollment--ultimately resulting in increased costs per student and an overall drop in enrollments. One commenter also stated that this could lead to some workforce areas being overfunded.

**Response:** The Commission is following the requirements of Texas Labor Code §302.062, which provides that in block granting funds for workforce training, employment services, and associated support services to workforce areas, the Commission must allocate amounts across the state using the same formula used to provide the funds to the state. The US Department of Education (ED) allocates AEL funds to Texas on the basis of the relative proportion of the population age 18 and over without a secondary degree and not enrolled in school. The AEL rules also include allocating federal AEL funds (excluding EL/Civics) and associated state matching funds to the workforce areas on this same basis. The allocation of federal EL/Civics funds is also proposed on the same basis that ED allocates the funds to Texas. The methodologies do not divert resources from workforce areas of high population density; rather, they

allocate resources in concert with the relative proportion of the population age 18 and over without a secondary degree and not enrolled in school.

Using a different method for the allocation of AEL funds than used in prior years will result in initial shifts in how funds are distributed across the state--with some workforce areas experiencing an increase in funding and some experiencing a decrease. While some workforce areas may have decreased capacity to serve as many individuals needing AEL services as in the past, other workforce areas will have increased capacity to serve more of the population in need of services. Thus, the Commission does not foresee an impact on the number of individuals who may be served statewide.

**Comment:** One commenter stated that equalization in the distribution of funding across the state is important, but that performance funding provides incentives for programs small and large and should remain intact.

**Response:** The Commission clarifies that the rule contains provisions for performance funding, with a percentage of funding made available for expenditure within each workforce area on the basis of the achievement of performance benchmarks set forth in §800.68.

#### **§800.71. General Deobligation and Reallocation Provisions**

Section 800.71(b) adds "AEL grant recipient" as an entity subject to §§800.71 - 800.77 of this subchapter.

Section 800.71(b)(1) adds "Adult Education and Literacy" as a category of funding subject to §§800.71 - 800.77 of this subchapter.

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

#### **§800.72. Reporting Requirements**

Section 800.72 adds "an AEL grant recipient" as an entity subject to the provisions regarding reporting requirements.

#### **New §800.78. Midyear Deobligation of AEL Funds**

New §800.78 sets forth the following provisions for midyear deobligation of AEL funds, which are similar to those applicable to other workforce funding streams, except that priority must be given to AEL grant recipients providing AEL services in the same workforce area, upon receipt and approval by the Commission of an acceptable plan:

- (a) The Commission may deobligate funds from an AEL grant recipient during the program year if an AEL grant recipient is not meeting the expenditure thresholds set forth in subsection (b) of this section.
  - (1) AEL grant recipients that fail to meet the expenditure thresholds set forth in subsection (b) of this section at the end of months five, six, seven, or eight of the program year (i.e., midyear) will be reviewed to determine the causes for the underexpenditure of funds, except as set forth in subsection (e) of this section.

- (2) The Commission must not deobligate more than the difference between an AEL grant recipient's actual expenditures and the amount corresponding to the relative proportion of the program year.
- (3) The Commission must not deobligate funds from an AEL grant recipient that failed to meet the expenditure thresholds set forth in subsection (b) of this section, if within 60 days prior to the potential deobligation period the Commission executes a contract amendment for a supplemental allocation or reallocation of funds in the same program funding category.
- (b) The Commission may deobligate funds midyear, as set forth in subsection (a) of this section, if an AEL grant recipient fails to achieve the expenditure of an amount corresponding to 90 percent or more of the relative proportion of the program year.
- (c) An AEL grant recipient subject to deobligation for failure to meet the requirements set forth in this section must, upon request by the Commission, submit a written justification. For an AEL consortium, a copy must be provided to all consortium members. The written justification must provide sufficient detail regarding the actions an AEL grant recipient will take to address its deficiencies, including:
  - (1) expansion of services proportionate to the available resources;
  - (2) projected service levels and related performance;
  - (3) reporting outstanding obligations; and
  - (4) any other factors an AEL grant recipient would like the Commission to consider.
- (d) Any amounts deobligated from an AEL grant recipient must be made available as a first priority to any other AEL grant recipient(s) providing AEL services within the same workforce area that meet the requirements of new §800.80(a), upon receipt and approval by the Commission of an acceptable plan.
- (e) To the extent this section may be found not to comply with federal requirements, or should any related federal waivers expire, the Commission will be subject to federal requirements in effect, as applicable.

**New §800.79. Voluntary Deobligation of AEL Funds**

New §800.79 states that to request a voluntary deobligation of funds allocated to the workforce area, an AEL grant recipient's chief executive officer must submit a written request to the Commission. For an AEL consortium, a copy must be provided to all consortium members. Any amounts voluntarily deobligated from an AEL grant recipient must be available as a first priority to any other AEL grant recipient(s) providing AEL services within the same workforce area, upon receipt and approval by the Commission of an acceptable plan.

**New §800.80. Reallocation of AEL Funds**

New §800.80 sets forth the reallocation provisions for AEL funds, which are similar to those applicable to other workforce funding streams, with the exception that any AEL reallocation must apply to AEL grant recipients, as follows:

- (a) For an AEL grant recipient to be eligible to receive deobligated AEL funds, the Commission may consider whether the AEL grant recipient:
  - (1) has met targeted expenditure levels as required by §800.78(a) of this subchapter, as applicable, for that period;
  - (2) has not expended or obligated more than 100 percent of the grant recipient's allocation for the category of funding;

- (3) has demonstrated that expenditures conform to cost category limits for funding;
- (4) has demonstrated the need for and ability to use additional funds;
- (5) is current on expenditure reporting;
- (6) is current with all single audit requirements; and
- (7) is not under sanction.

--(b) Any amounts deobligated or voluntarily deobligated from an AEL grant recipient must be made available as a first priority to any other AEL grant recipients providing AEL services within the same workforce area that meet the requirements of new §800.80(a), upon receipt and approval by the Commission of an acceptable plan. Following the determination that any such plan has not been determined to be acceptable, the Commission may consider an AEL grant recipient satisfying the requirements of subsection (a) of this section, upon receipt and approval by the Commission of an acceptable plan.

**COMMENTS WERE RECEIVED FROM:**

Vicki Angel, Retired Adult Education Instructor  
Dr. Pamela Anglin, President of Paris Junior College  
Carole Beal, Transition Specialist, Harris County Department of Education  
Kay Brooks, Grant Project Manager for GED & ESL Program, Brazosport College  
Beverly Bucsanyi, Adult ESL Instructor  
Ann Coleman, Texarkana ISD  
Lynda Detwiler, Adult ESL Instructor  
Mark Guthrie, Chairman of the Texas Association of Workforce Boards and Chairman of the Gulf Coast Workforce Development Board  
Natalia Guzman, Adult Basic Education Instructor, Harris County Department of Education  
Joshua Hayes, Director of Adult Education, College of the Mainland  
Leslie Helmcamp, Policy Analyst for the Center for Public Priorities  
Ronda Jameson, Director of STEM Education, Texarkana ISD  
Belinda Lee, Maud, Texas  
Dr. Beth Lewis, President of the College of the Mainland  
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Karen Ottinger, Adult Learning Center, Texarkana ISD  
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Dean Ransdell, Director of Adult Education, Texarkana ISD  
Debra Shelby, Adult Education Instructor, Texarkana ISD  
Shannon Shipp, Federal Bureau of Prisons  
Mike Temple, Executive Director of the Gulf Coast Workforce Development Board  
Vanessa Wakefield, Counselor, Washington Academy Charter School  
Barbara Yoder, Adult Education, Cleburne ISD

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

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

## CHAPTER 800. GENERAL ADMINISTRATION

### SUBCHAPTER A. GENERAL PROVISIONS

#### §800.2. Definitions.

The following words and terms, when used in this part, relating to the Texas Workforce Commission, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Adult Education and Literacy (AEL)--Services designed to provide adults with sufficient basic education that enables them to effectively:
  - (A) acquire the basic educational skills necessary for literate functioning;
  - (B) participate in job training and retraining programs;
  - (C) obtain and retain employment; and
  - (D) continue their education to at least the level of completion of secondary school and preparation for postsecondary education.
- (2) Agency--The unit of state government established under Texas Labor Code Chapter 301 that is presided over by the Commission and administered by the executive director to operate the integrated workforce development system and administer the unemployment compensation insurance program in this state as established under the Texas Unemployment Compensation Act, Texas Labor Code Annotated, Title 4, Subtitle A, as amended. The definition of "Agency" shall apply to all uses of the term in rules contained in this part, or unless otherwise defined, relating to the Texas Workforce Commission that are adopted after February 1, 2001.
- (3) Allocation--The amount approved by the Commission for expenditures to a local workforce development area during a specified program year, according to specific state and federal requirements.
- (4) Board--A Local Workforce Development Board created pursuant to Texas Government Code §2308.253 and certified by the governor pursuant to Texas Government Code §2308.261. This includes such a Board when functioning as the Local Workforce Investment Board as described in the Workforce Investment Act §117 (29 U.S.C.A. §2832), including those functions required of a Youth Council, as provided for under Workforce Investment Act §117(i). The definition of Board shall apply to all uses of the term in the rules contained in this part, or unless otherwise defined, relating to the Texas Workforce Commission that are adopted after February 1, 2001. Boards are subrecipients

as defined in OMB Circular A-133.

- (5) Child Care--Child care services funded through the Commission, which may include services funded under the Child Care and Development Fund, WIA, and other funds available to the Commission or a Board to provide quality child care to assist families seeking to become independent from, or who are at risk of becoming dependent on, public assistance while parents are either working or participating in educational or training activities in accordance with state and federal statutes and regulations.
- (6) Choices--The employment and training activities created under §31.0126 of the Texas Human Resources Code and funded under TANF (42 U.S.C.A. 601 et seq.) to assist persons who are receiving temporary cash assistance, transitioning off, or at risk of becoming dependent on temporary cash assistance or other public assistance in obtaining and retaining employment.
- (7) Commission--The body of governance of the Texas Workforce Commission composed of three members appointed by the governor as established under Texas Labor Code §301.002 that includes one representative of labor, one representative of employers, and one representative of the public. The definition of Commission shall apply to all uses of the term in rules contained in this part, or unless otherwise defined, relating to the Texas Workforce Commission that are adopted after February 1, 2001.
- (8) Formal Measures--Workforce development services performance measures adopted by the governor and developed and recommended through the Texas Workforce Investment Council (TWIC).
- (9) Employment Service--A program to match qualified job seekers with employers through a statewide network of one-stop career centers. (The Wagner-Peyser Act of 1933 (Title 29 U.S.C., Chapter 4B) as amended by the Workforce Investment Act of 1998 (P.L. 105-220))
- (10) Executive Director--The individual appointed by the Commission to administer the daily operations of the Agency, which may include a person delegated by the Executive Director to perform a specific function on behalf of the Executive Director.
- (11) Local Workforce Development Area (workforce area)--Workforce areas designated by the governor pursuant to Texas Government Code §2308.252 and functioning as a Local Workforce Investment Area, as provided for under Workforce Investment Act §116 and §189(i)(2) (29 U.S.C.A., §2831 and §2939).
- (12) One-Stop Service Delivery Network--A one-stop-based network under which entities responsible for administering separate workforce investment,

educational, and other human resources programs and funding streams collaborate to create a seamless network of service delivery that shall enhance the availability of services through the use of all available access and coordination methods, including telephonic and electronic methods--also known as Texas Workforce Solutions.

- (13) Performance Measure--An expected performance outcome or result.
- (14) Performance Target--A contracted numerical value setting the acceptable and expected performance outcome or result to be achieved for a performance measure, including Core Outcome Formal Measures. Achievement between 95 and 105 percent of the established target is considered meeting the target.
- (15) Program Year--The twelve-month period applicable to the following as specified:
  - (A) Child Care: October 1 - September 30;
  - (B) Choices: October 1 - September 30;
  - (C) Employment Service: October 1 - September 30;
  - (D) Supplemental Nutrition Assistance Program Employment and Training: October 1 - September 30;
  - (E) Project RIO: October 1 - September 30;
  - (F) Trade Act services: October 1 - September 30;
  - (G) Workforce Investment Act (WIA) Adult, Dislocated Worker, and Youth formula funds: July 1 - June 30;
  - (H) WIA Alternative Funding for Statewide Activities: October 1 - September 30;
  - (I) WIA Alternative Funding for One-Stop Enhancements: October 1 - September 30; and
  - (J) Adult Education and Literacy: July 1 - June 30.
- (16) Project Reintegration of Offenders (RIO)--A program that prepares and transitions ex-offenders released from Texas Department of Criminal Justice or Texas Juvenile Justice Department incarceration into gainful employment as soon as possible after release, consistent with provisions of the Texas Labor Code, Chapter 306; Texas Government Code §2308.312; and the Memorandum of Understanding with the Texas Department of Criminal

Justice and the Texas Juvenile Justice Department.

- (17) Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T)--A program to assist SNAP recipients to become self-supporting through participation in activities that include employment, job readiness, education, and training, activities authorized and engaged in as specified by federal statutes and regulations (7 U.S.C.A. §2011), and Chapter 813 of this title relating to Supplemental Nutrition Assistance Program Employment and Training.
- (18) TANF--Temporary Assistance for Needy Families, which may include temporary cash assistance and other temporary assistance for eligible individuals, as defined in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended (7 U.S.C.A. §201.1 et seq.) and the TANF statutes and regulations (42 U.S.C.A. §601 et seq., 45 Code of Federal Regulations (C.F.R.) Parts 260 - 265). TANF may also include the TANF State Program (TANF SP), relating to two-parent families, which is codified in Texas Human Resources Code, Chapter 34.
- (19) Trade Act Services--Programs authorized by the Trade Act of 1974, as amended (and 20 C.F.R. Part 617) providing services to dislocated workers eligible for Trade benefits through Workforce Solutions Offices.
- (20) TWIC--Texas Workforce Investment Council, appointed by the governor pursuant to Texas Government Code §2308.052 and functioning as the State Workforce Investment Board, as provided for under Workforce Investment Act §111(e) (29 U.S.C.A. §2821(e)). In addition, pursuant to the Workforce Investment Act §194(a)(5) (29 U.S.C.A. §2944(a)(5)), TWIC maintains the duties, responsibilities, powers, and limitations as provided in Texas Government Code §§2308.101 - 2308.105.
- (21) WIA--Workforce Investment Act (P.L. 105-220, 29 U.S.C.A. §2801 et seq.). References to WIA include references to WIA formula-allocated funds unless specifically stated otherwise.
- (22) WIA Formula-Allocated Funds--Funds allocated by formula to workforce areas for each of the following separate categories of services: WIA Adult, Dislocated Worker and Youth (excluding the Secretary's and governor's reserve funds and rapid response funds).
- (23) Workforce Solutions Offices Partner--An entity that carries out a workforce investment, educational, or other human resources program or activity, and that participates in the operation of the One-Stop Service Delivery Network in a workforce area consistent with the terms of a memorandum of understanding entered into between the entity and the Board.

## **SUBCHAPTER B. ALLOCATIONS**

### **§800.51. Scope and Purpose.**

- (a) The purpose of this rule is to interpret Texas Labor Code, §302.062, relating to the allocation of available funds for workforce training and services from the Texas Workforce Commission to workforce areas, as well as Texas Labor Code, §301.001 and §302.002, which establish the Texas Workforce Commission to operate an integrated workforce development system in this state, in particular through the consolidation of job training, employment, and employment-related programs, and direct the executive director to consolidate the administrative and programmatic functions under the authority of the Commission, to achieve efficient and effective delivery of services. 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 and consistent with the authority reflected in Texas Labor Code §302.004, satisfying federal program requirements, and operating an integrated workforce development system. This subchapter sets forth the funding to be allocated to workforce areas and the methods and procedures to be followed, in order to accomplish the consolidation and integration of workforce development programs. 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 under the terms of a properly executed contract between the Commission and a certified Board with an approved plan or an AEL grant recipient with an approved contract with the Commission.
- (c) The allocation formulas described in this subchapter will only be applicable for allocations and executed contracts for a complete program year. For contract periods of less than a complete program year, the allocated amounts will be negotiated between the Commission and the Board or an AEL grant recipient, based upon the remaining months of the program 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 or reallocated under this subchapter, may be used by the Commission for purposes authorized by state and federal laws and regulations.
- (f) Notwithstanding any other provision of the rules contained in this part, the level of funding allocated to a workforce area may be determined, modified, or reallocated by the Commission for one or more of the following reasons:
  - (1) to ensure full utilization of the funding;

- (2) to ensure compliance with state and federal requirements applicable to the state;
- (3) to meet the state's federal participation rates;
- (4) to respond to caseload changes; or
- (5) to respond to unforeseen demographic or economic changes.

**§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) **Accrued Expenditures**--Charges incurred during a given period for goods and tangible property received and services performed that cause decreases in net financial resources.
- (2) **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 Opportunity Reconciliation Act of 1996, §407, as amended.
- (3) **Contract Closeout Settlement Package**--Financial, performance, and other reports required as a condition of the contract, which must be submitted when one of the following conditions is met:
  - (A) the contract has expired;
  - (B) all available funds for the contract period have been paid out;
  - (C) all accrued expenditures chargeable to the specific contract have been incurred; or
  - (D) the period of available funds has expired or been terminated.
- (4) **Contract Period**--The length of time in which a contract for allocated funds between the Commission and a Board or an AEL grant recipient is in effect and during which funds may be expended for a specified purpose, unless prohibited by a federal grantor agency. A contract period longer than a program year shall be specified under the terms of a properly executed contract.
- (5) **Deobligation**--An action adopted by the Commission to decrease an amount for a specific program and contract period in a contract with a Board or an

AEL grant recipient for allocated funds, on the basis of provisions as set forth in §800.73 and §800.74 of this subchapter.

- (6) Equal Base Amount--An amount equivalent to .10 percent (one-tenth of one percent) of a total allocation, which shall be provided equally to each workforce area.
- (7) Hold Harmless/Stop Gain--A procedure that assures that a relative proportion of an allocation to a workforce area is not below 90 percent of the corresponding proportion for the past two years, or that the current year proportion is not above 125 percent of the prior two-year relative proportion.
- (8) Monthly expenditure report--A written or electronically submitted report by a Board or an AEL grant recipient that contains information regarding services for each category of funding allocated by the Commission, and in which the Board or an AEL grant recipient lists expenditures and obligations by category of funding.
- (9) Obligation--A debt established by a legally binding contract, letter of agreement, sub-grant award, or purchase order, which has been executed prior to the end of a contract period, for goods and services provided by the end of the contract period, and which will be liquidated 60 calendar days after the end of a contract period, unless such definition is superceded by federal requirements.
- (10) Relative proportion of the program year--The corresponding part of the program year that is used to compare expenditures. That is, if 50 percent of the program year has transpired, then the relative proportion of the program year is 50 percent.
- (11) WIA Formula Allocated Funds--Funds allocated by formula to workforce areas for each of the following separate categories of funding: WIA Adult, Dislocated Worker, and Youth.

#### **§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 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 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 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 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.

**§800.71. General Deobligation and Reallocation Provisions.**

- (a) Purpose. The purpose of this rule is to promote effective service delivery, financial planning, and management to ensure full utilization of funding, and to reallocate funds to populations in need.
  
- (b) Scope. Sections 800.71 - 800.77 of this subchapter shall apply to funds provided to workforce areas under a contract between the Board or an AEL grant recipient and the Commission for the following categories of funding:
  - (1) Adult Education and Literacy
  - (2) Child Care
  - (3) Choices
  - (4) Employment Service
  - (5) SNAP E&T
  - (6) Project RIO
  - (7) WIA Alternative Funding for Statewide Activities
  - (8) WIA Alternative Funding for One-Stop Enhancements

**§800.72. Reporting Requirements.**

- (a) A Board or an AEL grant recipient shall submit a monthly financial report, including accrued expenditures and obligations, on or before the 20th calendar day of the following month that list information as required by the Commission for the reporting period.
  
- (b) The Commission may require that a Board or an AEL grant recipient amend

expenditure reports as the result of Commission reviews, audits, or other evaluations.

- (c) A Board or an AEL grant recipient shall submit a contract closeout settlement package on or before 60 days following the end of the contract period.
- (d) The Commission may suspend payments, advances, or reimbursements to Boards or an AEL grant recipient in the cash draw system if required financial reports or contract closeout settlement packages are not submitted by the deadline.
- (e) The Agency's executive director may approve a Board's or an AEL grant recipient's request of extension for the submission of a required financial report or contract closeout settlement package, if such extension request is received on a timely basis with sufficient justification.

**§800.78. Midyear Deobligation of AEL Funds.**

- (a) The Commission may deobligate funds from an AEL grant recipient during the program year if an AEL grant recipient is not meeting the expenditure thresholds set forth in subsection (b) of this section, provided, however, that the requirements of subsection (d) of this section are satisfied.
  - (1) AEL grant recipients that fail to meet the expenditure thresholds set forth in subsection (b) of this section at the end of months five, six, seven, or eight of the program year (i.e., midyear) will be reviewed to determine the causes for the underexpenditure of funds, except as set forth in subsection (e) of this section.
  - (2) The Commission shall not deobligate more than the difference between an AEL grant recipient's actual expenditures and the amount corresponding to the relative proportion of the program year.
  - (3) The Commission shall not deobligate funds from an AEL grant recipient that failed to meet the expenditure thresholds set forth in subsection (b) of this section, if within 60 days prior to the potential deobligation period the Commission executes a contract amendment for a supplemental allocation or reallocation of funds in the same program funding category.
- (b) The Commission may deobligate funds from an AEL grant recipient midyear, as set forth in subsection (a) of this section, if an AEL grant recipient fails to achieve the expenditure of an amount corresponding to 90 percent or more of the relative proportion of the program year.
- (c) An AEL grant recipient subject to deobligation for failure to meet the requirements set forth in this section shall, upon request by the Commission, submit a written justification. For an AEL consortium, a copy must be provided to all AEL consortium members. The written justification shall provide sufficient detail

regarding the actions an AEL grant recipient will take to address its deficiencies, including:

- (1) expansion of services proportionate to the available resources;
  - (2) projected service levels and related performance;
  - (3) reporting outstanding obligations; and
  - (4) any other factors an AEL grant recipient would like the Commission to consider.
- (d) Any amounts deobligated from an AEL grant recipient must be made available as a first priority to any other AEL grant recipient(s) providing AEL services within the same workforce area that meet the requirements of §800.80(a) of this subchapter, upon receipt and approval by the Commission of an acceptable plan.
- (e) To the extent this section may be found not to comply with federal requirements, or should any related federal waivers expire, the Commission will be subject to federal requirements in effect, as applicable.

#### **§800.79. Voluntary Deobligation of AEL Funds.**

To request a voluntary deobligation of funds allocated to the workforce area, an AEL grant recipient's chief executive officer shall submit a written request to the Commission. For an AEL consortium, a copy must be provided to all AEL consortium members. Any amounts voluntarily deobligated from an AEL grant recipient must be made available as a first priority to any other AEL grant recipient(s) providing AEL services within the same workforce area that meet the requirements of §800.80(a) of this subchapter, upon receipt and approval by the Commission of an acceptable plan.

#### **§800.80. Reallocation of AEL Funds.**

- (a) For an AEL grant recipient to be eligible to receive deobligated AEL funds, the Commission may consider whether the AEL grant recipient:
- (1) has met targeted expenditure levels as required by §800.78(a) - (b) of this subchapter, as applicable, for that period;
  - (2) has not expended or obligated more than 100 percent of the workforce area's allocation for the category of funding;
  - (3) has demonstrated that expenditures conform to cost category limits for funding;
  - (4) has demonstrated the need for and ability to use additional funds;

- (5) is current on expenditure reporting;
  - (6) is current with all single audit requirements; and
  - (7) is not under sanction.
- (b) Any amounts deobligated or voluntarily deobligated from an AEL grant recipient shall be made available as a first priority to any other AEL grant recipients providing AEL services within the same workforce area that meet the requirements of subsection (a) of this section, upon receipt and approval by the Commission of an acceptable plan. Following the determination that any such plan has not been determined to be acceptable, the Commission may consider an AEL grant recipient satisfying the requirements of subsection (a) of this section, upon receipt and approval by the Commission of an acceptable plan.