

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 JUNE 22, 2006, 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*: **July 7, 2006**

The rules will take effect: **July 12, 2006**

The Texas Workforce Commission (Commission) adopts the repeal of the following sections of Chapter 800 relating to General Administration:

Subchapter B. Allocations, §800.73 and §800.74

The Commission adopts the following new sections of Chapter 800 relating to General Administration:

Subchapter B. Allocations, §800.73 and §800.74

The Commission adopts amendments to the following sections of Chapter 800 relating to General Administration:

Subchapter B. Allocations, §800.52, §800.71, and §800.75

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the adopted Chapter 800 rule change is to establish an integrated policy for the deobligation and reallocation of Local Workforce Development Board (Board) administered funds. This policy will further the Commission's support of an integrated workforce system and will promote cost benefits through improved, administrative efficiencies in the local workforce development areas (workforce areas).

In addition, amendments are adopted to reflect changes pursuant to House Bill (HB) 2604, enacted by the 79th Texas Legislature, Regular Session (2005), which directs the transfer of the Disabled Veterans' Outreach Program and Local Veterans' Employment Representative grant from the Agency to the Texas Veterans Commission.

The adopted changes fulfill statutory requirements embodied in Texas Labor Code §301.001, as amended, establishing the Commission to:

- (1) operate an integrated workforce development system in this state, in particular through the consolidation of job training, employment, and employment-related programs;
- (2) standardize, simplify, and make more consistent the procedure of determining amounts for deobligation and reallocation;
- (3) streamline and achieve administrative efficiency and effectiveness in order to foster the integration of workforce development programs, minimize administrative burdens and costs, and maximize the proportion of funding available for services; and
- (4) delete various obsolete provisions, add to various provisions to make references more accurate and complete, and make various technical corrections.

Additionally, Texas Labor Code §302.002 directs the Agency's executive director to:

- (1) consolidate the administrative and programmatic functions of the programs under the authority of the Commission to achieve efficient and effective delivery of services; and
- (2) contract with the Boards for program planning and service delivery.

Based on the Commission's commitment to an integrated workforce development system—wherein siloed funding streams and diverse programs are blended into a functionally unified whole—the Commission requested and received two waivers from the U.S. Department of Labor (DOL). The purpose of the waivers was to align the policies for the deobligation and reallocation of Board-administered funds. By standardizing and making the procedure of deobligation and reallocation more consistent, the Commission promotes the integration and administration of workforce development programs.

The waivers allow the Commission to make midyear deobligations and reallocations in order to better manage workforce funding. Based on the approved waivers, the rules have been amended to allow deobligations based on an evaluation of a Board's expenditures, pertinent performance data, and a reasonable cost per participant in months five through eight of the appropriate program year for each funding source, and to integrate the processes for the reallocation of funds. This process is more responsive and allows the Commission to better address the changing needs of workforce areas. Should any related federal waivers expire, the Commission will be subject to federal requirements in effect at that time.

The Commission believes that having its actions clearly delineated in rule provides the best opportunity for the Boards and the Commission to have a common understanding of how expenditures and performance are reviewed, and the impact of the review on potential deobligations. Boards have consistently performed well, ensuring that services are available throughout their workforce areas, but at times the expenditures and performance indicate that the formula for the allocation may be lagging behind current local economic conditions. The Commission encourages Boards to resize their program and, where appropriate, make voluntary deobligations.

As noted, Boards' performance has permitted the Commission to minimize deobligations. Over the past six years, the Commission has deobligated less than two-thirds of one percent of block grant allocations to workforce areas. The Commission's record of carefully considered, judicious, and extremely modest deobligations further serves to promote its guiding principle:

the most successful deobligation policy results in no deobligations, because services are being provided and funds expended in the workforce area to which they are allocated.

The Commission embraces this concept and supports Boards in their efforts to meet employers' needs for qualified workers. The adopted rules establish clear standards for potential deobligations and reallocations to further foster ongoing and substantive communications between the Commission in its oversight role, and the Boards in their role as stewards of the funds. The adopted rule establishes a common framework for measuring the local service delivery system against the needs-based formulas established by statute and regulation. Moreover, the adopted rule provides a significant opportunity for the Boards to offer information that informs the Commission about any activities or changes in the local economy that might mitigate a deobligation.

The adopted rules further support the Commission's goal of an integrated workforce system and allow for increased efficiency in meeting the workforce development needs of employers and job seekers.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

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

SUBCHAPTER B. ALLOCATIONS

General Comments

Comment: One commenter thanked the Commission for the opportunity to comment and expressed support of the rule changes.

Response: The Commission appreciates the comment.

§800.52. Definitions

The Commission adopts new §800.52(10), the definition of "relative proportion of the program year."

§800.71. General Deobligation and Reallocation Provisions

The Commission adopts the amendment of §800.71(b)(7) by removing the reference to "Veterans' Employment and Training" as a category of funding to reflect the direction of HB 2604. Therefore, §§800.71(b)(8)–800.71(b)(10) are renumbered as new §§800.71(b)(7)–800.71(b)(9), respectively.

§800.73. Child Care Match Requirements and Deobligation

The Commission adopts the repeal of §800.73, Expenditure, Local Match, and Obligation Levels, and adopts new §800.73, Child Care Match Requirements and Deobligation, which delineates the policy to which Boards must adhere for securing local child care matching funds, as well as the policy for potential deobligations of federal child care funds that remain unmatched after the fourth month of the program year.

§800.74. Deobligation of Funds

The Commission adopts the repeal of §800.74 and adopts new §800.74, which establishes an integrated deobligation policy. Currently, with the exception of WIA formula allocated funds, funds may be deobligated at the end of the third and ninth months of the program year. Federal Trade Adjustment Assistance Act funds have an additional point for deobligation at the sixth month. The Commission believes the current three-month point for deobligation occurs too soon during the program year to fully analyze the relationship between expenditures, service delivery design, and performance—and the ninth month is too late in the program year to adequately align reallocations, service delivery design, and enhancements to performance. Therefore, for all Board-administered funds including WIA formula allocated funds, the Commission adopts the replacement of the current three-month, six-month, and nine-month deobligation points with a new midyear deobligation period that begins at the end of the fifth month and continues through the end of the eighth month in the first year of funds availability.

The adopted deobligation of Board-administered funds, if applicable, would be based on expenditures, pertinent performance data, and related cost per participant data occurring during the fifth month and continuing through the eighth month. For WIA formula funds, the Commission will review data during the first program year of funds availability in the appropriate program year.

Comment: One commenter stated that obligations should be considered in this rule because often training institutions do not submit invoices that align with benchmarks. The commenter asked how the "cost per participant" would be determined, whether Boards would be benchmarked against one another, and how pertinent performance data would be determined. Additionally, the commenter stated that the "pertinent performance data" and the "related cost per participant data" is too vague, and stated that the Boards did not have input into the definition or methodology.

Response: The Commission appreciates that Boards face challenges with the late billing procedures of many community colleges. The Commission, however, believes that the rules address these challenges by allowing Boards to offer supporting documentation—such as information regarding obligations, input on performance issues, and local policies or anomalies affecting the cost per participant—prior to any action the Commission might take regarding a deobligation.

Further, the Commission's intent is not to benchmark one Board against another. The Commission believes that the rule is clear in its description of how a reasonable cost per participant is established. The rule sets out four criteria for determining reasonableness of per participant costs, which support an understanding of each Board's service delivery system

as well as any recent actions that may affect a Board's formula allocations and relevant local factors.

Because the rule applies to well-defined funding streams, which include Child Care, WIA Formula funds, and other Board-contracted funds, the rule is clear that the review of pertinent or applicable performance is associated with the funding stream that has failed to meet the expenditure benchmark.

It is the Commission's intent to establish a clear understanding of the definitions and methodology for the recommendations regarding potential deobligations of certain funding streams. The Commission further believes that the proposed rules provided Boards with the greatest opportunity to provide critical information.

Additionally, the adopted rules set forth another deobligation point for WIA funds at the end of the first year of funds availability if Boards have not expended 80% of each category of WIA formula funds.

Boards will be notified by the Commission of any potential deobligations and will be encouraged to voluntarily deobligate any excess funding or provide justification for projected expenditures, as set forth in the adopted rule.

For Board-administered funds other than WIA formula allocated funds, the Commission will base a potential deobligation on each Board's expenditure of an amount equal to 90% of the corresponding proportion of the category of funds for each of the previous three months. For WIA funds, the Commission will base a potential deobligation on each Board's expenditure of an amount equal to 80% of the corresponding proportion of the category of WIA formula allocated funds for each of the previous three months.

Funds contracted within sixty days prior to a period during which the Board may be subject to deobligations will not be subject to deobligation.

It is important to note that the Commission currently has established an incentive for reaching an 80% expenditure benchmark for WIA formula allocated funds. Boards that reach the 80% expenditure threshold at the end of the first program year are eligible to receive the Commission's Statewide Activity funds, some of the most flexible federal dollars available for unique local initiatives.

If a Board fails to meet the 90% or 80% expenditure benchmarks for any three-month period, the Commission will review a Board's performance for the appropriate category of funds, and the reasonableness of the cost per participant for that category of funds. In reviewing a Board's performance, the Commission will determine whether 95% of the applicable performance measure has been achieved. Additionally, the Commission will determine whether a Board has achieved a reasonable cost per participant, based upon the factors set forth in §800.74(d)(2)(A)–(E).

The adopted rule clarifies that the amount the Commission may deobligate is no greater than the difference between a Board's actual expenditures as of the end of the third consecutive month in which a Board has failed, and the relative proportion of the program year's expected expenditures.

Recognizing that an individual workforce area's service delivery system presents unique opportunities and challenges, the Commission is permitting an opportunity for Boards to justify their current and projected expenditure levels, pertinent performance data, and service levels prior to the Commission's consideration of a potential deobligation of Board-administered funds, including WIA formula allocated funds.

§800.75. Reallocation of Funds

Currently, funds administered by the Commission, with the exception of WIA formula allocated funds, are reallocated to eligible workforce areas based on criteria in §800.75(a). A separate method for reallocating WIA formula allocated funds has been employed to address statutory requirements set forth in WIA §128 and §133. Under WIA, all workforce areas not subject to a deobligation receive amounts available for reallocation. Unlike other Board-administered funds, no consideration has been given to a workforce area's demonstrated need, capacity, or current or past performance.

A waiver granted by the DOL waives federal requirements set forth in WIA §128 and §133 and authorizes the Commission to reallocate recaptured WIA formula funds to workforce areas using the same procedures and criteria the Commission employs for other Board-administered funds. The waiver will promote maximum expenditure of recaptured funds, enabling the Commission to streamline administrative practices and further enhance the Texas workforce system's effectiveness in meeting the needs of employers and job seekers.

Therefore, the Commission adopts the amendment of §800.75(a) by including WIA formula allocated funds. The Commission also adopts the removal of §800.75(a)(2) and §800.75(b)(3) because these paragraphs are no longer applicable. The Commission seeks to facilitate the maximum expenditure of deobligated Board-administered funds through the redistribution of WIA funds to workforce areas that have achieved not only targeted expenditure levels but also have met established performance targets. Redistributing funds based solely on whether a Board achieves its expenditure target does not fully address performance issues—such as whether the Board has met employers' needs for a highly skilled and job-ready workforce.

The Commission also adopts the amendment of §800.75(a) and §800.75(b)(1) by removing the reference to "Veterans' Employment and Training" funds to reflect the direction of HB 2604. Additionally, the Commission adopts §800.75(b)(1) to include WIA formula allocated funds.

Effective Date

The Commission adopts that the provisions regarding the deobligation of WIA formula allocated funds based upon 80% of the relative proportion of the program year shall be in effect starting with Program Year 2006 funds (beginning July 1, 2006). The Commission further adopts that the provisions regarding the deobligation of non-WIA formula allocated funds based upon 90%

of the relative proportion of the program year shall be in effect starting with Program Year 2007 funds (beginning October 1, 2006).

COMMENTS WERE RECEIVED FROM:

Shawna Chambers, on behalf of Workforce Solutions Brazos Valley
Janie Bates, on behalf of Workforce Texoma

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 B. ALLOCATIONS

§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 Opportunities 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 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 for allocated funds, on the basis of provisions as set forth in §800.73 and §800.74 of the Commission rules.
- (6) **Equal Base Amount** - An amount equivalent to .10% (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% of the corresponding proportion for the past two years, or that the current year proportion is not above 125% of the prior two-year relative proportion.
- (8) Monthly expenditure report - A written or electronically submitted report by a Board that contains information regarding services for each category of funding allocated by the Commission, and in which the Board 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% of the program year has transpired, then the relative proportion of the program year is 50%.
- (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.

§800.71. 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 800.71-800.75 of this chapter shall apply to funds provided to workforce areas under a contract between the Board and the Commission for the following categories of funding:
 - (1) Child Care;
 - (2) Choices;
 - (3) Employment Services;
 - (4) Food Stamp Employment and Training;
 - (5) Project RIO;

- (6) Trade Act Services;
- (7) WIA Formula Allocated Funds;
- (8) WIA Alternative Funding for Statewide Activities; and
- (9) WIA Alternative Funding for One-Stop Enhancements.

§800.73 Child Care Match Requirements and Deobligation

- (a) A Board shall meet the following requirements for unmatched federal Child Care funds that are contingent upon a Board securing local funds.
 - (1) By the end of the fourth month following the beginning of the program year, a Board shall secure donations, transfers, and certifications totaling at least 100% of the amount it needs to secure in order to access the unmatched federal Child Care funds available to the workforce area at the beginning of the program year.
 - (2) Throughout the program year and by the end of the twelfth month, a Board shall ensure completion of all donations, transfers, and certifications consistent with the contribution schedules and payment plans specified in the local agreements.
- (b) The Commission may deobligate, at any time following the fourth month of the program year, all or part of the difference between a Board's actual level of secured and completed match and the level of performance that is required, as set forth in §800.73(a).

§800.74. Deobligation of Funds

- (a) The Commission may deobligate the following funds midyear, as set forth in §800.74(b):
 - (1) Child Care (with the exception of unmatched federal Child Care funds that are contingent upon a Board securing local funds, as set forth in §800.73), Choices, Employment Service, Food Stamp Employment and Training, Project RIO, Trade Act Services, WIA Alternative Funding for Statewide Activities, and WIA Alternative Funding for One-Stop Enhancements funds: if a Board fails to achieve the expenditure of an amount corresponding to 90% or more of the relative proportion of the program year; and
 - (2) WIA formula allocated funds:

- (A) if a Board fails to achieve the expenditure of an amount corresponding to 80% or more of the relative proportion of the program year for each category of WIA formula allocated funds; and
 - (B) after the end of the twelfth month following the beginning of a program year, any unexpended funds that exceed 20% of the allocation for each category of WIA formula allocated funds for the program year.
- (b) For midyear deobligations during the first program year:
- (1) Boards that are failing to meet the expenditure thresholds, as set forth in §800.74(a), have not achieved at least 95% of the applicable performance measures, or have not achieved a reasonable per participant cost, as set forth in §800.74(d)(2), at the end of months five, six, seven, or eight will be reviewed to determine whether they also have failed to meet such thresholds in the two previous months.
 - (2) Boards that have failed to meet expenditure and performance thresholds for three consecutive months, as set forth in §800.74(b)(1), may be subject to deobligation.
- (c) The Commission may deobligate no more than the difference between a Board's actual expenditures as of the end of the three-consecutive-month period during which the Board has failed to expend the amount corresponding to the relative proportion of the program year, as set forth in §800.74(a), and the amount corresponding to the relative proportion of the program year.
- (d) The Commission will not deobligate funds from a Board that failed to meet the expenditure thresholds as set forth in §800.74(a):
- (1) if less than 60 days prior to the potential deobligation period, a contract amendment has been executed with the Board for a supplemental allocation or reallocation of funds in the same program category of funding; or
 - (2) if a Board has achieved at least 95% of the applicable performance measures and has achieved a reasonable per participant cost, as of the end of the third consecutive month during which the Board has failed to expend the amount corresponding to the relative proportion of the program year as set forth in §800.74(a). Factors that the Commission may review to determine the reasonableness of per participant costs include:
 - (A) the statewide cost per participant served;
 - (B) the Board's service levels for each category of funding, as specified in the approved Board plan;

- (C) transfers or redesignations of funds;
 - (D) expenditures reported in accordance with the Agency's financial reporting requirements; and
 - (E) other local factors that may affect the cost of providing services.
- (e) The Commission may deobligate funds if a Board is not meeting expenditure thresholds as set forth in §800.74(a), has not achieved at least 95% of the applicable performance measures, or has not achieved a reasonable per participant cost.
- (f) A Board subject to deobligation for failure to meet the requirements set forth in §800.74(d)(2) shall submit a written justification within five working days of the date of notification from the Commission. A Board may voluntarily provide a written justification prior to receiving a formal request from the Commission. The written justification shall provide sufficient detail regarding the actions a Board will take to address its deficiencies, and may include:
- (1) expansion of services proportionate to the available resources;
 - (2) projected service levels and related performance;
 - (3) outstanding obligations; and
 - (4) any other factors a Board would like the Commission to consider.
- (g) To the extent this section is 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.

§800.75. Reallocation of Funds

(a) Reallocation.

For reallocation of Child Care, including unmatched federal funds that are contingent upon a Board securing local funds, Choices, Employment Service, Food Stamp Employment and Training, Project RIO, Trade Act Services, WIA Formula Allocated Funds, WIA Alternative Funding for Statewide Activities, and WIA Alternative Funding for One-Stop Enhancements funds provided by the Commission, the Commission may reallocate funds to an eligible workforce area based on the applicable method of allocation, as set forth in this subchapter and may modify the amount to be reallocated by considering the following:

- (1) the amount specified in a Board's written request for additional funds;

- (2) the demonstrated ability of a Board to effectively expend funds to address the need for services in the workforce area;
- (3) Board performance during the current and prior program year; and
- (4) related factors as necessary to ensure that funds are fully utilized.

(b) Eligibility.

- (1) For a workforce area to be eligible for a reallocation of Child Care (excluding unmatched federal funds that are contingent upon a Board securing local funds), Choices, Employment Services, Food Stamp Employment and Training, Project RIO, Trade Act Services, WIA Formula Allocated Funds, WIA Alternative Funding for Statewide Activities, and WIA Alternative Funding for One-Stop Enhancements funds, the Commission may consider whether a Board:
 - (A) has met targeted expenditure levels as required by §800.74(a) and §800.74(b) of this subchapter, as applicable, for that period;
 - (B) has not expended more than 100% of the workforce area's allocation for the category of funding;
 - (C) has demonstrated that expenditures conform to cost category limits for funding;
 - (D) has demonstrated the need for and ability to use additional funds;
 - (E) is current on expenditure reporting;
 - (F) is current with all single audit requirements; and
 - (G) is not under sanction.
 - (2) For a workforce area to be eligible for a reallocation of unmatched federal Child Care funds that are contingent upon a Board securing local funds, the Commission may consider whether a Board has met the level for securing and completing local match requirements set out in §800.73(a) of this subchapter, relating to Expenditure, Local Match, and Obligation Levels. The Commission may also consider the factors listed in paragraph (1) of this section that apply, including factors referenced in subparagraphs (B)-(G).
- (c) To the extent this section does not comply with federal requirements, or should any related federal waivers expire, the Commission will be subject to federal requirements in effect at that time.