

## Allocations and Funding Rules

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

The Texas Workforce Commission (Commission) adopts an amendment to Subchapter A. General Provisions, §800.2. Definitions; the repeal of §§800.51, 800.52, 800.58, and 800.61 and new §§800.51, 800.52, 800.58, 800.61, 800.71-800.75 for Subchapter B, Allocations and Funding; and the repeal of Subchapter C. Reallocation of Funds, §§800.81 - 800.86. Section 800.2, §800.74 and §800.75 are adopted with changes to the proposed rules as published in the June 29, 2001 issue of the *Texas Register* (26 TexReg 4836). The remaining sections are adopted without changes and will not be republished.

The purposes of the changes are to reorganize the allocation and reallocation rules; to streamline the rules by removing the Funds Utilization and Service Level Report and Plan requirements; to focus on target expenditure levels, performance data relating to allocations and funds; and to set forth methods of examining expenditure levels and performance data as they relate to the provision of workforce services and training.

The Commission's intent in removing the Funds Utilization and Service Level Report and Plan is to respond to the needs and requests of local workforce development boards (Boards). The Commission strives for a method of ensuring that funds are fully utilized in the areas that are allocated those funds based on the federal formulas or as otherwise permitted by state law to be formula allocated using a need-based formula. The Funds Utilization and Service Level Report and Plan were initially developed to permit Boards to plan service delivery and related expenditures more carefully, yet provide a mechanism for the Commission to evaluate such performance, deobligate and quickly redistribute unexpended funds to areas of the state demonstrating the ability to provide services more efficiently and effectively, using funds in a timely manner. In implementing the Funds Utilization and Service Level Reports and Plans, it is apparent that the plans and reports created additional administrative burdens and hindered flexibility. The Commission intends to remove any reporting or planning requirements that are not necessary. The Commission also seeks to simplify processes, yet maintain a predictable schedule for the redistribution of allocated monies.

In § 800.2, under the definition of child care, the reference to Welfare-to-Work formula grants was deleted because the Welfare-to-Work funds include some state General Revenue funds as well as formula grant funds. A change to the definition of WIA formula allocated funds or services and activities was made to delete the reference to services and activities and to emphasize WIA funding categories.

Section 800.58(f)(4) removes the requirement that Boards expend at least 4% of the Child Care and Development Funds for quality improvement activities, in order to give Boards more flexibility in determining the use of funds.-

Section 800.61(c) changes the provisions relating to state general revenue funds for Welfare-to-Work to allow for more flexibility in the use of those funds. Section 800.61(e) is removed.

The rules numbers are consolidated into one subchapter for Allocation, Deobligation and Reallocation by renumbering §§800.81 - 800.86 as §§800.71-800.75.

In Section 800.81(b) the intent provision is moved to §800.51 to locate the provision so it is apparent that it applies to allocation, deobligation and reallocation.

Section 800.81 is renumbered as §800.71 and in subsection (b) the language is removed that excepts Welfare-to-Work and Workforce Investment Act formula allocated funds, including Adult, Youth and Dislocated Worker funds, from the intent section; it also streamlines the reference to WIA throughout the applicable rules by referencing WIA Adult, Youth and Dislocated Workers as "WIA formula allocated funds."

In § 800.81(c) and throughout the rest of §800.81, changes are made to shorten the references from WIA Adult, WIA Dislocated Worker and WIA Youth to "WIA formula allocated funds" and remove unnecessary provisions relating to (c) (2) exceptions to the scope of the rules.

Section 800.82 repeals the rule and merges the definitions of expenditures, monthly expenditure report, and obligation into §800.52 and deletes the remaining definitions of Funds Utilization and Service Level Plan, Program year, and service level report.

Section 800.83 is renumbered as §800.72 and the planning requirement related to the Funds Utilization and Service Level Reports is removed.

The provision regarding necessary revisions to the monthly expenditure report is eliminated throughout.

Section 800.84 is renumbered as §800.73 and a provision is added encouraging Boards to meet targeted expenditure levels to achieve appropriate levels of services. Subsection (b), the provision relating to carryover funds for Child Care, is eliminated and replaced with the provision that allows the Commission to consider obligated funds in reviewing the Boards' compliance with target expenditure levels as well as other factors necessary to evaluate performance of the Board.

Section 800.85 is renumbered as §800.74 and changes from required expenditure levels to target expenditure levels and allows the consideration of a Board's justification of current and projected service levels and related performance data in determining an amount of funding to deobligate. This section is also changed to clarify the procedure for requesting voluntary deobligation of funds and includes the notification of the designated chief elected official in the local workforce development area.

Section 800.86 is renumbered as §800.75 and paragraph (b) (1) is changed from a requirement to utilize specific criteria to allow the Commission to consider factors including targeted expenditure levels.

For purposes of this preamble, the term "Agency" refers to the daily operations of the Texas Workforce Commission under the direction of the executive director, and the term "Commission" refers to the three-member body of governance composed of Governor-appointed members.

Background. The Commission is charged with ensuring accountability among Boards and subrecipients of the Agency. Boards are charged with the oversight and management of the

services and activities of the One-Stop Service Delivery Network. Specifically, Board and Commission goals reflect WIA goals: streamlining services; empowering individuals; universal access; increased accountability; strong role for Boards and the private sector; and state and local flexibility. The four principles of Texas' vision are: limited and efficient state government; local control; personal responsibility; and support for strong families.

Texas Government Code Chapter 2308, Texas Labor Code Title 4 and WIA have imposed on Boards a number of duties and responsibilities for the administration of Commission-funded activities, including maintaining adequate fiscal systems, complying with the uniform rules for administration of grants and agreements, meeting contract performance measures, and complying with all applicable state and federal statutes and regulations.

The rules emphasize the relationship between the Commission and Boards in assuring compliance with federal and state requirements through performance reviews, technical assistance, and contract oversight and monitoring.

The Commission received comments from the following local workforce development boards and one organization: The Coastal Bend Workforce Development Board, the North Central Workforce Development Board, the Southeast Texas Workforce Development Board, the Texoma Workforce Development Board, the West Central Workforce Development Board and the Center for Public Policy Priorities.

Comment: Regarding Section 800.2, one commenter stated a positive comment about the Food Stamp Employment & Training (E&T) program allocation coinciding with the fiscal year as with other programs, making it more uniform. Another commenter stated that changing the program year for Food Stamp E&T from September 1 – August 31 to October 1 – September 30, would require that Board programs will follow three non-aligned program years and that such a system would require an inordinate amount of time and duplicative efforts to develop partial-year budgets and contracts for program operators. The second commenter suggested that the Commission not change the Food Stamp E&T program year so that it will continue to align with the program years of the Child Care, Choices, and Welfare-to-Work programs. The second commenter further recommended that all programs follow a single program year, where allowed by law.

Response: The Commission recognizes that the establishment of policies that align workforce services across differing categorical populations and different program years plays an important part in the full integration of programs within the Texas Workforce Centers. The proposal to change the Food Stamp E&T program year to align with the federal fiscal year was an attempt to simplify the financial reporting requirements and ensure timely closeouts. However, with the expansion of these services into currently unserved counties and desire to align services more closely with other workforce services, including Choices, the Commission agrees to change the rule to retain the current program year designation of September 1 through August 31.

Comment: Regarding §800.58(f)(1), one commenter stated that sufficient funds must be used for direct child care services to ensure Commission-approved child care targets are met. The commenter stated that the proposed rule indicates that the Board's primary responsibility in administering the Child Care program is to ensure that adequate quantities of children are placed in care and that quality initiatives are a secondary priority. While quality child care initiatives

are provided through such vehicles as the TWC Train Our Teachers (TOT) program, the Board does not believe that such activities are adequate to address the needs for quality child care in its local workforce development area. The commenter said that local control of quality child care funds has allowed the Board to establish quality activities such as Child Development Associate training and providing technical assistance to child care providers adding that quality, affordable child care is essential to the success of workforce development programs and to the long-term economic health of the State, both now and in years to come. The commenter further stated the Board's commitment to developing local quality child care resources and urged TWC to continue in efforts to secure additional quality child care funding. Another commenter asked whether the performance targets for Boards would be raised if the Board expended less than 4% of the Child Care funds on quality activities. In other words, the commenter asked whether their Boards would be required to serve more children per day if the Board chose to spend less than 4% on quality activities.

**Response:** The Commission recognizes that child care represents an essential support service for low-income, working parents and has taken every opportunity to communicate that belief during the legislative process in order to provide child care services to low-income parents and to continue activities that promote quality care for children. In the General Appropriations Act, 77<sup>th</sup> Legislature, Regular Session, funding levels were set and the Commission and local workforce boards were instructed to ensure that direct child care services were provided to an average of 107,744 children whose families are transitioning from welfare to employment or working and determined to be at-risk. As a result, the Commission eliminated the previous requirement that Boards expend at least 4% of their total child care allocation on quality activities, allowing Boards to determine what amount is appropriate to expend on quality activities in the workforce area while continuing to meet the area's performance target. Boards may also choose to use the federal funds drawn down through local donations, transfers and certifications to support quality initiatives.

**Comment:** Two commenters supported the elimination of the Fund Utilization and Service Level Report and Plan requirements. Due to the on-going enhancement of state and local financial and programmatic reporting systems, this additional report added little value to performance management.

**Response:** The Commission appreciates the support and feedback from the Boards regarding enhancement of the state and local financial and reporting systems.

**Comment:** Regarding §800.73, one commenter recommended changing the expenditure requirements in (a) (1), (2) and (3) as follows: (1) expenditure level of 20% by the end of the 4<sup>th</sup> month; (2) expenditure level of 50% by end of 8<sup>th</sup> month; and (3) at least 90% for child care for all board areas, regardless of allocation size, 90% for Choices and 90% for WtW general revenue funds. The recommendation was based on the concern that as funds vary from one contract period to the next, it is highly desirable to ensure continuity of service if funding levels decrease. The ability to carry forward up to 10% of the prior year allocation would allow Board areas to be proactive in ensuring service, in the event of a funding decrease in the subsequent year.

**Response:** The Commission appreciates the Board's desire to reserve a cushion of funds for use in tight budget years. However, steps by Congress and the Legislature to evaluate the timely expenditure of funds and rescind or otherwise remove spending authority provides clear

indication that states and local workforce boards must spend funds during the period for which the appropriation was made, and minimize amounts to be carried forward into future budget periods. Therefore, the Commission does not agree to change the expenditure amounts listed in the rule.

Comment: Regarding § 800.74(d), one commenter stated appreciation for the flexibility allowing for the voluntary deobligation of funds by a board. Another commenter recommended that because funds are allocated to a local workforce development area on behalf of its residents, the Commission should require that any request for voluntary deobligation of funds be in writing and include the signatures of both the board chair and the designated chief elected official for the area seeking deobligation. The Commenter stated that such oversight will ensure that the interests of local communities are taken into account in as full a manner as possible.

Response: The Commission understands the commenter's concern about the Board chairs and chief elected officials (CEOs) being involved in their local workforce board's decisions regarding the use of allocated funds. The Commission notes that state law establishes the duties of CEOs, and directs that they determine among themselves how local resources are to be allocated within the workforce area and how they are to be kept informed regarding workforce development activities. The Commission believes that mechanisms already exist to allow each area to include CEO approval of voluntary deobligations, if desired by the local community. However, the Commission believes access to such information is critical. As a result, the Commission will amend the rule to require that the Board chair sign any written request to the Commission for voluntary deobligation of funds from an area and that the Board chair notify the designated CEO of that area concurrently with the notification to the Commission.

Comment: Regarding §800.75(b)(1)(G), one commenter stated concern about the re-obligation of funds and not being available to an area if the board is under sanction. Some flexibility of these rules may allow an area to meet performance and come out from under sanctions. Regarding § 800.75(b)(2) and (3), one commenter recommended that item (1)(G) be included for these sections as well, which requires that a Board not be under sanction to receive reallocated funds.

Response: The Commission agrees that the Commission should consider other factors including sanctions to determine eligibility for reallocations and that the provisions in §800.75(b)(1) where applicable should relate to §800.75(b)(2) and (b)(3). For that reason the Commission agrees to clarify the language in (b)(2) and (b)(3) to reflect that the factors in (b)(1) also may be considered in evaluating reallocations.

Comment: One commenter recognized that the Commission is striving to ensure that workforce funds are fully utilized while holding true to Texas' vision for local control and efficient State government, congratulated the Commission on this endeavor, and supported the effort to simplify these processes while maintaining a system for the timely redistribution of allocated funds.

Response: The Commission appreciates the continued relationship with the Local Workforce Development Boards and the feedback received from the Boards and the public regarding the proposed rules. After consideration of the comments, the Commission does see a need to change the rules as a result of the comments.

For information about the Commission please visit our web page at [www.texasworkforce.org](http://www.texasworkforce.org).

The amendment is 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 amendment affects Texas Labor Code, Chapter 302, and Texas Human Resources Code, Chapters 31 and 44.

## **Subchapter A. General Provisions**

### **§800.2. Definitions**

The following words and terms, when used in this Part 20, relating to the Texas Workforce Commission, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) 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 20, or unless otherwise defined, relating to the Texas Workforce Commission that are adopted after February 1, 2001.
- (2) Allocation -- The amount approved by the Commission for expenditures during a specified period, according to specific state and federal requirements.
- (3) 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 the Workforce Investment Act §117(i). The definition of "Board" shall apply to all uses of the term in the rules contained in this Part 20, or unless otherwise defined, relating to the Texas Workforce Commission that are adopted after February 1, 2001.
- (4) Child Care -- Child care services funded through the Agency, which may include services funded under the Child Care and Development Fund, Welfare-to-Work ~~Formula Grants~~, WIA, and other funds available to the Agency 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.
- (5) Choices -- The employment and training activities created under §31.0126 of the 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. Formerly known as Job Opportunities and Basic Skills Training (JOBS).

- (6) 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 20, or unless otherwise defined, relating to the Texas Workforce Commission that are adopted after February 1, 2001.
- (7) Core Outcome Measures -- Workforce development services performance measures adopted by the Governor and developed and recommended through the Texas Council on Workforce and Economic Competitiveness (TCWEC). The Core Outcome Measures have been adjusted to allow for a follow-up period of six months in lieu of the one-year period established by TCWEC.
- (8) 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.
- (9) Food Stamp Employment and Training (FSE&T) Activities -- The activities authorized and engaged in as specified by federal Food Stamp Employment and Training statutes and regulations (7 U.S.C.A. 2011), and Chapter 813 of this title relating to Food Stamp Employment and Training.
- (10) 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 referred to as the Texas Workforce Network.
- (11) Performance Measure -- An expected performance outcome or result.
- (12) Performance Standard -- A contracted numerical value setting the acceptable and expected performance outcome or result to be achieved for a performance measure, including Core Outcome Measures.
- (13) Program Year -- The twelve-month period applicable to the following as specified:
  - (A) Child Care: September 1 - August 31;
  - (B) Choices: September 1 - August 31;
  - (C) Welfare-to-Work: September 1 - August 31;
  - (D) Food Stamp Employment and Training: September 1 - August 31; **and**
  - (E) **WIA Adult, Dislocated Worker, and Youth: July 1 - June 30;**
  - ~~(F) WIA Dislocated Worker: July 1 - June 30; and~~
  - ~~(G) WIA Youth: July 1 - June 30.~~

- (14) 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 Opportunities Reconciliation Act of 1996, as amended (7 U.S.C.A. §201.1 et seq.) and the Temporary Assistance for Needy Families statutes and regulations. (42 U.S.C.A. §601 et seq., 45 C.F.R. Parts 260-265) Formerly named Aid to Families with Dependent Children (AFDC).
- (15) TCWEC -- Texas Council on Workforce and Economic Competitiveness appointed by the Governor pursuant to Texas Government Code §2308.052 and functioning as the State Workforce Investment Board (SWIB), as provided for under the 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)), TCWEC maintains the duties, responsibilities, powers and limitations as provided in Texas Government Code §§2308.101-2308.105.
- (16) Texas Workforce Center Partner -- an entity which carries out a workforce investment, educational or other human resources program or activity, and which participates in the operation of the One-Stop Service Delivery Network in a local workforce development area consistent with the terms of a memorandum of understanding entered into between the entity and the Board.
- (17) WIA -- Workforce Investment Act, Public Law 105-220, 29 U.S.C.A. §2801 *et seq.* References to WIA include references to WIA formula allocated funds unless specifically stated otherwise.
- (18) WIA formula allocated funds ~~or services and activities~~ -- funds allocated by formula to local workforce development areas for ~~funds or services and activities related to each of the following separate categories of funding relating to WIA:~~ WIA Adult, Dislocated Worker and Youth ~~provisions~~(excluding the Secretary's and Governor's reserve funds and rapid response funds).
- (1918) Local Workforce Development Area -- Workforce development areas designated by the Governor pursuant to Texas Government Code §2308.252 and functioning as a Local Workforce Investment Area, as provided for under the Workforce Investment Act §116 and §189(i)(2) (29 U.S.C.A. §§2831 and 2939). Also referred to as workforce area.

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The repeal is 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 repeal affects Texas Labor Code, Chapter 302, and Texas Human Resources Code, Chapters 31 and 44.

#### Subchapter B. Allocations and Funding

§800.51. Scope and Purpose

§800.52. Definitions

§800.58. Child Care

§800.61. Welfare-to-Work

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The new 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 new rules affect Texas Labor Code, Chapter 302, and Texas Human Resources Code, Chapters 31 and 44.

## **Subchapter B. Allocations and Funding**

### **<new>§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 and consistent with the authority reflected in Texas Labor Code Section 302.004. 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 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 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.

### **<new>§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, as amended.
- (2) **Expenditures**--Costs incurred for goods and services that cause decreases in net financial resources.
- (3) **Monthly expenditure report**--A report submitted 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.
- (4) **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 program year, and which will be performed within the program year or within 90 calendar days after the end of a program year. Any obligation periods extending beyond 90 days after the program year shall be prorated using the straight-line method or other acceptable proration method that accurately matches benefits received with dollars included as obligations. Obligations include Individual Training Accounts as described in the Workforce Investment Act.
- (5) **Two-parent family participation rate**--The percentage of two-parent families receiving cash assistance that a state must engage in an approved work activity for a specified number of hours per week as determined by the state and permitted by the by the Personal Responsibility and Work Opportunities Reconciliation Act of 1996, §407, as amended.

**<new>§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) Sufficient funds must be used for direct child care services to ensure Commission-approved performance targets are met.
  - (2) 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.
  - (3) 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.
  - (4) Each Board shall set the amount of the total expenditure of funds to be used for quality activities consistent with federal and state statutes and regulations.
  - (5) The Board shall comply with any additional requirements adopted by the Commission or contained in the Board contract.

**<new>§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) General revenue funds appropriated or otherwise made available to the Commission for Welfare-to-Work may be distributed to workforce areas based upon a Board's demonstrated effectiveness in providing Welfare-to-Work services including the Board's ability to expend funds, meet performance measures, and other factors that ensure full utilization of funds.
- (d) Boards shall ensure that no more than 10% of the Welfare-to-Work funds, including Welfare-to-Work state general revenue funds, are expended for administrative costs, as defined by the appropriate federal regulations and Commission policy.

**<new>§800.71. General Deobligation and Reallocation Provisions**

- (a) Purpose. The purpose of this rule is to promote effective service delivery and financial planning and management, to ensure full utilization of funding, and to reallocate funds to populations in need.
- (b) Scope.
  - (1) 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:
    - (A) Child Care;
    - (B) Choices;
    - (C) Welfare-to-Work general revenue funds;
    - (D) Food Stamp Employment and Training; and
    - (E) WIA formula allocated funds.
  - (2) Sections 800.71, 800.72, and 800.73 of this chapter shall apply to funds provided to workforce areas under a contract between the Board and the Commission for Welfare-to-Work, 42 U.S.C.A. §603 *et seq.*
- (c) Effective Date. Sections 800.71-800.75 shall be effective on September 1, 2001, and applicable to any funds made available to workforce areas or not yet expended by the Boards on or after September 1, 2001.

**<new>§800.72. Reporting Requirements**

- (a) A Board shall submit a monthly expenditure report 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 amend expenditure reports as the result of Commission reviews, audits, or other evaluations.

**<new>§800.73. Expenditure, Local Match, and Obligation Levels**

- (a) For Child Care (excluding unmatched federal Child Care funds that are contingent upon a Board securing local funds), Choices, Welfare-to-Work general revenue funds, and Food Stamp Employment and Training funds provided by the Commission, the Commission may deobligate funds allocated to Boards if a Board fails to meet the following target expenditure levels applicable to the beginning of the year allocations less any deobligated amounts:

- (1) by the end of the fourth month following the beginning of the program year, reported expenditure level of at least 25% ;
- (2) by the end of the eighth month following the beginning of the program year, reported expenditure level of at least 55% ; and
- (3) by the end of the twelfth month following the beginning of the program year, reported expenditure levels of:
  - (A) at least 97% for Child Care, unless the workforce area has an allocation of less than \$5,000,000, in which case the Board shall expend at least 95% for Child Care;
  - (B) at least 95% for Choices;
  - (C) at least 95% for Welfare-to-Work general revenue funds; and
  - (D) 100% for Food Stamp Employment and Training, unless federal requirements permit a lower amount, in which case the level shall be at least 95%.
- (b) The Commission may deobligate and reallocate, as provided in §§800.74 and 800.75 of this subchapter, relating to Deobligation of Funds and Reallocation of Funds, any balances not expended by the end of the fourth month of the next program year. The Commission may consider obligated funds in reviewing the Board's compliance with subsection (a) of this section, as well as other factors necessary to evaluate a Board's performance in determining the amount of funds to deobligate and reallocate.
- (c) For unmatched federal Child Care funds that are contingent upon a Board securing local match funds, a Board shall meet the following performance requirements.
  - (1) By the end of the fourth month following the beginning of the program year, Boards shall secure donations, transfers and certifications totaling at least 100% of the amount a Board 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, Boards shall ensure completion of all donations, transfers and certifications consistent with the contribution schedules and payment plans specified in the local agreements.
- (d) For WIA formula allocated funds for each category of funding~~allocated formula funds~~, a Board shall meet the following reported levels for each of the categories of funding:
  - (1) By the end of the twelfth month following the beginning of a program year, Boards shall obligate at least 80% of the allocation for each category of funding less any amount reserved up to 10% for costs of administration.
  - (2) By the end of the 24th month following the beginning of a program year, Boards shall expend 100% of the allocation for each category of funding.

**<new>§800.74. Deobligation of Funds**

- (a) For deobligation of Child Care (excluding unmatched federal Child Care funds that are contingent upon a Board securing local funds), Choices, Welfare-to-Work general revenue funds, and Food Stamp Employment and Training funds, the Commission may, for the category of funding:

- (1) deobligate all or part of the difference between a Board's actual expenditure level and the target expenditure level described in §800.73(a) and (b) of this subchapter, relating to Expenditure, Local Match and Obligation Levels, as applicable for each category of funding for that period; and
  - (2) consider a Board's justification of current and projected service levels and related performance data in determining to deobligate.
- (b) For deobligation of unmatched federal Child Care funds that are contingent upon a Board securing local funds, 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 described in §800.73(c) of this subchapter, relating to Expenditure, Local Match, and Obligation Levels.
- (c) For deobligation of WIA formula allocated funds for each separate category of funds related to WIA Adult, Dislocated Worker and Youth, the Commission shall deobligate funds from each of these categories of funding as follows:
- (1) after the end of the twelfth month following the beginning of a program year, any unobligated funds which exceed 20% of the allocation for each category of WIA formula allocated funds for that program year, less any amount reserved up to 10% for costs of administration; and
  - (2) after the end of the 24th month following the beginning of a program year, any unexpended funds of the program year allocation for each category of WIA formula allocated funds.
- (d) For voluntary deobligation, a Board may submit a written request that the Commission deobligate a portion of the workforce area's allocation for one or more categories of funding. **The Board chair must sign the written request and concurrently notify the designated chief elected official of the workforce area of the written request for the deobligation of funding.**

**<new>§800.75. Reallocation of Funds**

- (a) Reallocation.
- (1) For reallocation of Child Care, including unmatched federal funds that are contingent upon a Board securing local funds, Choices, Welfare-to-Work general revenue funds, and Food Stamp Employment and Training funds, the Commission may reallocate funds to an eligible workforce area based on the applicable allocation method set forth in this subchapter and may modify the amount to be reallocated by considering the following:
    - (A) the amount specified in the Board's written request for additional funds;
    - (B) the ability of the Board to expend funds to address the need for services in the workforce area;
    - (C) Board performance during the prior program year; and
    - (D) related factors as necessary to ensure that funds are fully utilized.

(2) For WIA formula fund allocations, the Commission shall reallocate funds as provided in WIA §§128 and 133.

(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, Welfare-to-Work general revenue funds, and Food Stamp Employment and Training funds, the Commission may consider whether a Board~~shall~~:

(A) ~~has~~ve met targeted expenditure levels as required by §800.73(a) and (b) of this subchapter, as applicable, for that period;

(B) ~~has~~ve not expended more than 100% of the workforce area's allocation for the category of funding;

(C) ~~has~~ve demonstrated that expenditures conform to cost category limits for funding;

(D) ~~has~~ve demonstrated the need for and ability to use additional funds;

(E) ~~is~~be current on expenditure reporting;

(F) ~~is~~be current with all single audit requirements; and

(G) ~~is not be~~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 workforce area's~~the Commission may consider whether a Board ~~has~~ ~~shall have~~ met the level for securing and completing local match requirements set out in §800.73(c) 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 subsections (B) -(G).

(3) For a workforce area to be eligible for a reallocation of WIA formula allocated funds, the Commission may consider whether a ~~the Board~~ ~~has~~ ~~shall have~~ met the obligation or expenditure requirement for the applicable ~~each~~ category of WIA formula allocated funds applicable to the program year. The Commission may also consider the factors listed in paragraph (1) of this section that apply, including factors referenced in subsections (B) - (G).

\*n

The repeal is 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 repeal affects Texas Labor Code, Chapter 302, and Texas Human Resources Code, Chapters 31 and 44.

### Subchapter C. Charges for Copies of Public Records

§800.81. General Provisions

§800.82. Definitions

§800.83. Funds Utilization and Service Level Plan and Reports

§800.84. Required Expenditure, Local Match, and Obligation Levels

§800.85. Deobligation of Funds

§800.86. Reallocation of Funds