

§800.83 Performance Review and Assistance

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 new Subchapter C. Performance and Contract Management and new §800.83. Performance Review and Assistance, as published in the June 29, 2001 issue of the *Texas Register* (26 TexReg 4840) with changes.

Background. The Commission is charged with ensuring accountability of Boards and subrecipients of the Agency. Boards are charged with the oversight and contract management of the services and activities delivered by contract service providers within the One-Stop Service Delivery Network. Specifically, Board and Commission goals reflect Workforce Investment Act (WIA) goals: streamlining services; empowering individuals; universal access; increased accountability; strong role for Boards and the private sector; and state and local flexibility. These goals also reflect the four principles of Texas' vision: limited and efficient state government; local control; personal responsibility; and support for strong families. Subrecipients are charged with effective and efficient use of funds. Boards and subrecipient accountability is the primary objective of the sanctions rules.

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 the contract performance measures, and complying with all applicable state and federal statutes and regulations. The Texas Government Code also sets forth similar provisions for duties and responsibilities of subrecipients of the Agency. The Commission is responsible for oversight of Boards' and subrecipients' activities and for identifying difficulties in meeting contract performance levels or complying with applicable statutes and regulations.

The adopted rules emphasize the relationship between the Commission, Boards, and subrecipients of the Agency, in assuring compliance with federal and state requirements through performance reviews, technical assistance, and contract oversight and monitoring. The purposes of performance review, technical assistance and performance improvement plans are to assist the Boards and subrecipients of the Agency in meeting and exceeding their performance goals, as well as correcting deficiencies and meeting statutory, regulatory and contract responsibilities. If performance review and technical assistance, including a performance improvement plan and initial corrective actions do not produce anticipated results, the Commission may consider the sanctions actions described in the Commission rules to ensure that services continue to be available in the workforce areas and that there is no interruption of services. The new sanctions rules complement the new subchapter on Performance Review and Assistance, which focuses on helping Boards and subrecipients of the Agency avoid sanctions.

Subchapter C. is repealed and renamed as new Subchapter C. Performance and Contract Management and is intended to begin with §800.81.

New §800.83 is added relating to performance review and assistance. The purposes of the rules are more specifically to:

- (1) ensure successful service delivery outcomes for Boards and subrecipients of the Agency and provide accountability through technical assistance and contract management;
- (2) provide successful interventions to assist Boards and subrecipients of the Agency in their mission to increase employment or reemployment opportunities for participants as well as provide quality applicants for Texas employers;
- (3) describe the Commission's purpose and intent in addressing Boards and subrecipients of the Agency performance and assistance needs; and
- (4) provide for additional Board outreach activities to allow Board members and employees to become more proficient in the administration and operation of Board activities.

The Commission received comments from one local workforce development board, the West Central Workforce Development Board, regarding the rules. The comment summary and response is as follows.

Comment: The commenter questioned the necessity of the rule as it relates to performance and contract management. While the commenter agreed with the principles stated in the rule, the commenter expressed concern regarding a lack of specificity in how the goal and purposes would be accomplished by the rule and recommended withdrawing the rule until it could be further developed.

Response: The Commission set forth the rule to provide information to the public regarding the performance review and assistance process generally and to incorporate a provision for cooperation with the Agency by the Boards and subrecipients of the Agency. The provisions in the rule are consistent with current statutory and contract requirements. The Commission intends that this rule be used to tailor performance assistance and technical services to meet specific needs of Boards and subrecipient of the Agency. Each situation will require consideration of the totality of the circumstances. For that reason, the Commission does not believe it is necessary to withdraw the rule or add specificity at this time. The Commission welcomes recommendations for specific improvements to the rule in the future as the Agency continues to provide performance review and assistance to assist Boards with integrating workforce services. To facilitate a better understanding of the new provisions, the Commission has added a new subsection (e) and renumbered the remaining subsections accordingly to define what is intended to be included in a Performance Improvement Plan.

The new rule 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 rule affects Texas Labor Code, Chapter 302, and Texas Human Resources Code, Chapters 31 and 44.

<new> Subchapter C. Performance and Contract Management.

<new>§800.83. Performance Review and Assistance

- (a) Intent. The intent of the Commission is to define the role of performance review and assistance provided by the Agency. The role of performance review and assistance is to ensure successful service delivery outcomes and provide accountability through technical assistance and contract management.
- (b) Goal. The goal of the Commission is to provide successful interventions to increase employment or reemployment opportunities for participants as well as providing quality applicants for Texas employers.
- (c) Purpose. The Agency offers a sequence of interventions including basic technical assistance, contract management, and development of a Performance Improvement Plan.
- (d) Boards and Subrecipients of the Agency. Boards and their contractors and subrecipients of the Agency shall ensure cooperation and compliance with the Agency's performance review and assistance activities and services.
- (e) Performance Improvement Plan. A Performance Improvement Plan is a plan that is jointly developed between the Agency and a Board or contract service provider to assist a Board with improving compliance or performance through specific technical assistance or training, which may include the following:
 - (1) identification of one or more specific performance improvement issues;
 - (2) assessment of specific technical assistance or training needs;
 - (3) selection of one or more specific technical assistance or training activities to be implemented;
 - (4) identification of the appropriate entities to provide the technical assistance or training, including the Board, the Commission, other Boards or other entities;
 - (5) identification of a timeline for completion of the technical assistance or training;
and
 - (6) specific dates for reassessment of technical assistance or training needs and completion of the specific technical assistance or training.
- (f)(e) Compliance. Failure to cooperate and comply with the Agency's performance review and assistance activities and services, including the Performance Improvement Plan, may subject a Board or a subrecipient of the Agency to the assignment of a sanction status and penalty.