

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART XX. Texas Workforce Commission

CHAPTER 800. Allocation of Funds

SUBCHAPTER B. Allocation and Funding

40 TAC §§800.51-800.60

The Texas Workforce Commission (the Commission) proposes new §§800.51-800.60, concerning allocation of funds to local workforce development areas pursuant to the Texas Labor Code, §301.061. As the Commission is implementing the State's new and innovative system of workforce training and services through local workforce development boards, the cooperation of and input from all interested parties is essential to ensure the success of this endeavor. In that spirit, the Commission hopes that all interested parties will provide their comments to the Commission. In order to facilitate this process, a series of public hearings regarding this rule will be held.

It is the intent of the Commission to allocate funds to local workforce development areas for the purpose of meeting or exceeding statewide performance measures as set forth in the state General Appropriations Act. The proposed rule sets forth the level required by law to be allocated to local workforce development 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.

The specific amount of funds available for allocation to workforce areas will be determined during the Commission's budgetary process. Input from workforce boards and other interested parties will be sought. The proposed rule is designed to be responsive to the needs of local areas, changes in state and federal laws and regulations, and issues that may arise in the transition of workforce training and services from the Commission to the local workforce development boards.

As the 75th legislative session closes, the Commission promulgates this rule in order to implement the intentions of the Legislature and Governor. The Commission intends to complete this rulemaking process prior to the start of fiscal year 1998.

The proposed rule specifies the method the Commission will employ in carrying out the allocation of funds to the local workforce development areas provided for in Texas Labor Code, §302.062 for certain workforce training and service programs. These programs are: the Job Opportunities and Basic Skills Program under the Temporary Assistance For Needy Families Program as authorized under 42 U.S.C. §§601 et. seq.; the Food Stamp Employment and Training Program authorized under 7 U.S.C. §§2011 et. seq.; job training programs funded under the Job Training Partnership Act (JTPA) (19 U.S.C. §§1501 et. seq.); Employment Services under §7(a) of the Wagner-Peyser Act (29 U.S.C. Chapter 4B); and child care services provided under Chapter 44, Texas Human Resources Code.

Not included in the calculation of the minimum percentages of funds to be allocated are: funds for education coordination and grants under §123 of JTPA (29 U.S.C. §1533) (Title IIA & IIC); Governor's reserve funds under JTPA (Title III); programs for older individuals under §204 of JTPA (29 U.S.C. §1604) (Title IIA); and veterans' programs under §441 of JTPA (29 U.S.C. §1721) (Title IVC). Provisions of the JTPA governing the allocation of these funds either do not grant the Commission the authority or discretion to allocate these funds, require distribution of funds according to the state's grant proposal, or require funds be allocated to programs that are exempt from the Texas Labor Code, §302.062. Finally, funds appropriated for the Investment in Long-Term Success Employment Strategies for TANF recipients in the state General Appropriations Act (Rider Number 27, Article VII, House Bill 1, 75th Legislature Regular Session (1997)), are not included in the proposed rule. Although these funds are not included in determining the minimum percentages of funds

allocated, the Commission intends to allocate as much of these funds as possible to workforce areas. Certain programs under the Commission's authority, which are not exempted from the requirements of Labor Code, §302.062 are not addressed within this rule. Specifically, adult education programs under Texas Education Code, §11.18 and postsecondary vocational and technical job training programs unrelated to Chapters 61, 108, 130 and 135, and Subchapter E, Chapter 88, Educational Code, are excluded from this rulemaking as the Legislature continued these programs under the jurisdiction of the Texas Education Agency (See Chapter 260, Section 1, Texas Session Laws, 74th Legislature Regular Session (1995)). The proprietary schools program under Chapter 32, Education Code, is also not included in this rule, as it falls within the state's regulatory powers and does not contain workforce training or employment services. Funds used for any other program not identified will be allocated according to the allocation requirements of the funding source.

Randy Townsend, Director of Finance, has determined that for the first five-year period the sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections as proposed. Mr. Townsend has certified that there will be no foreseeable impact on local economies or overall employment as a result of enforcing or administering the sections as proposed.

Mr. Townsend also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be to assure an effective distribution of funds for workforce training and services. There are no anticipated adverse impact on small businesses as a result of enforcing or administering the sections as proposed. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. The federal and state rules regarding the fiscal management of the programs are unchanged by these sections. Comments on the proposal may be submitted to David Nesenholtz, Deputy Finance Director for Budget and Planning, Texas Workforce Commission Building, 101 East 15th Street, Room 672, Austin, Texas 78778, (512) 463-2992. Comments may also be submitted via fax to (512) 463-2220 or e-mailed to: david.nesenholtz@twc.state.tx.us. Comments must be received by the Commission by July 17, 1997 for consideration. The new sections are proposed under Texas Labor Code, Title 4, which provides the Texas Workforce Commission with the authority to adopt, amend, or rescind such rules as it deems necessary for the effective administration of this Act. The new sections affect Texas Labor Code, Chapter 302, particularly §302.062.

#### §800.51.Scope and Purpose.

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

(b) Funds allocated or reallocated under this subchapter will only be made available to the local boards under the terms of a properly executed contract between a certified local board with an approved plan and the Commission.

(c) The allocation formulas described in this subchapter will only be applicable for allocations and executed contracts for a complete state fiscal year. For contract periods of less than a complete state fiscal year, the allocated amounts will be negotiated between the Commission and the Board, based upon the remaining months of the state fiscal year.

#### §800.52. Definitions.

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

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.

Allocation--The amount available for expenditures within a workforce area during a specified period, according to specific state and federal requirements.

Average net unit rate--The average amount per child (adjusted to full-time equivalent unit) paid for child care during the previous year, less parent fees or other subsidy, in order to account for variations in market rates across the state.

JOBS/TANF work requirement--The requirement for an adult recipient to engage in an approved work activity for a specified number of hours per week as a condition of eligibility for TANF cash assistance.

Mandatory work registrant--A food stamp recipient subject to participation in the Food Stamp Employment and Training program as a condition of eligibility, as specified in 7 Code of Federal Regulation 273.7.

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

Workforce area--A local workforce development area under Government Code, §2308.252.

#### §800.53. JOBS/TANF Program.

(a) Funds available to the Commission under the JOBS/TANF program (Job Opportunities and Basic Skills (JOBS) under Temporary Assistance to Needy Families program (TANF) as authorized at 42 U.S.C. §§601 et. seq.) will be allocated to the workforce areas using a need-based formula, in order to meet state and federal requirements, as set forth in subsection (b) of this section.

(b) At least 80% of the JOBS/TANF program funds, excluding Investment in Long-Term Success for TANF Recipients components, will be allocated to the workforce areas on the basis of:

(1) the relative proportion of the total number of two-parent families with JOBS/TANF work requirements residing within the workforce area to the statewide total number of two-parent families with JOBS/TANF work requirements, and

(2) the relative proportion of the total number of single-parent families with JOBS/TANF work requirements residing within the workforce area to the statewide total of single-parent families with JOBS/TANF work requirements.

(3) Funding will be divided between paragraphs (1) and (2) of this subsection based on the need to meet federal participation rates for both the two-parent families and all families, as required by federal law.

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

#### §800.54. Food Stamp Employment and Training Program.

(a) Funds available to the Commission under the Food Stamp Employment and Training program (FSET) (7 U.S.C. §2015(d)) will be allocated to the workforce areas using a need-based formula, as set forth in subsection (b) of this section.

(b) At least 80% of the FSET funds will be allocated to the workforce areas on the basis of the relative proportion of the total unduplicated number of mandatory work registrants receiving food stamps residing within the workforce

area to the statewide total unduplicated number of mandatory work registrants receiving food stamps.

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

#### §800.55. Job Training Partnership Act Program.

(a) Funds available to the Commission under the Job Training Partnership Act (JTPA) (29 U.S.C. Chapter 19) will be allocated to workforce areas based on service delivery areas within the workforce area using federally approved formulas. Funds must be used within the appropriate service delivery area pursuant to JTPA.

(b) At least 77% of the funds under JTPA Title IIA-Adult Training Program will be allocated according to the service delivery areas.

(c) One-Hundred percent of the JTPA Title IIB-Summer Youth Employment and Training Program funds will be allocated according to the service delivery areas.

(d) At least 82% of the JTPA Title IIC-Youth Training Program funds will be allocated according to the service delivery areas.

(e) At least 60% of JTPA Title III-Employment and Training Assistance for Dislocated Workers funds will be allocated according to substate areas.

#### §800.56. Child Care Services.

(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 subsection (b) of this section.

(b) For JOBS/TANF child care, funds will be allocated among workforce areas on the basis of:

(1) the relative proportion of the total number of children aged 0-12 years in single parent households with JOBS/TANF work requirements residing within the workforce area to the statewide total number of children aged 0-12 years in single parent households with JOBS/TANF work requirements;

(2) the relative proportion of the total number of children aged 0-12 years in two-parent households with JOBS/TANF work requirements residing within the workforce area to the statewide total number of children aged 0-12 years in two-parent households with JOBS/TANF work requirements; and

(3) an adjustment for average net unit rates for JOBS/TANF child care.

(c) For At-Risk child care, funds will be allocated among workforce areas on the basis of:

(1) the relative proportion of the total number of children aged 0-12 years in families at or below 75% of the state median income residing within the workforce area to the statewide total number of children aged 0-12 years in families at or below 75% of the state median income, and

(2) an adjustment for average net unit rates for At-Risk child care.

(d) For Food Stamp Employment and Training child care, funds will be allocated among workforce areas on the basis of:

(1) 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, and

(2) an adjustment for average net unit rates for Food Stamp Employment and Training child care.

(e) For transitional child care, funds will be allocated among workforce areas as follows:

(1) fifty percent will be based on the relative proportion of the average number of children residing within the workforce area receiving transitional child care during the first three quarters of the state fiscal year preceding the state

fiscal year for which the allocation is being calculated to the statewide average number of children receiving transitional child care during the first three quarters of the state fiscal year preceding the state fiscal year for which the allocation is being calculated;

(2) fifty percent will be based on the relative proportion of the total state fiscal year JOBS child care allocation for the workforce area for the state fiscal year for which the allocation is being calculated to the total state fiscal year statewide JOBS child care allocation for the state fiscal year for which the allocation is being calculated; and

(3) an adjustment for average net unit rates for transitional child care.

(f) For locally matched initiatives for child care and quality improvements, funds will be allocated among workforce areas on the basis of the relative proportion of children aged 0-12 years in families at or below 75% of the state median income residing within the workforce area to the statewide total of children aged 0-12 years in families at or below 75% of the state median income.

(g) For Early Childhood Development Resources, funds will be allocated among workforce areas on the basis of:

(1) an equal base amount needed for a resource room in each workforce area, and

(2) remaining funds allocated as follows:

(A) thirty percent will be based on the relative proportion of the total number of Child Care Management Services (CCMS) vendors that are registered family homes and those that are group day homes located within the workforce area to the statewide total number of CCMS vendors that are registered family homes and group day homes;

(B) forty-five percent will be based on the relative proportion of the total number of CCMS vendors that are licensed centers located within the workforce area to the statewide total number of CCMS vendors that are licensed centers; and

(C) twenty-five percent will be based on the relative proportion of the average number of children per day receiving Commission-funded child care services located within the workforce area to the statewide average number of children per day receiving Commission-funded child care services.

(h) For child care training, funds will be allocated among workforce areas on the basis of:

(1) an equal base amount for child care training in each workforce area, and

(2) the relative proportion of the total number of licensed and registered child care facilities located within the workforce area to the statewide total number of licensed and registered child care facilities.

(i) For CCMS operations, funds will be allocated among local workforce development areas on the basis of:

(1) an equal base amount for CCMS operations, and

(2) the remaining funds allocated as follows:

(A) seventy percent will be based on the relative proportion of the average number of children receiving Commission-funded child care services within the workforce area to the statewide average number of children receiving Commission-funded child care services;

(B) fifteen percent will be based on the relative proportion of the total number of CCMS vendors located within the workforce area to the statewide total number of CCMS vendors; and

(C) fifteen percent will be based on the relative proportion of the total number of licensed and registered child care facilities located within the workforce area to the statewide total number of licensed and registered child care facilities.

(j) For management and oversight of child care services, funds will be allocated among workforce areas on the basis of:

(1) an equal base amount for management and oversight of child care services within each workforce area, and

(2) the relative proportion of the average number of children per day receiving Commission-funded child care services located within the workforce area to the statewide average number of children per day receiving Commission-funded child care services.

§800.57. Employment Services.

At least 80% of the funds available to the Commission for the Employment Services program under §7(a) of the Wagner-Peyser Act (29 U.S.C. Chapter 4B) will be utilized by the Commission within the workforce areas according to the established federal formula, as follows:

(1) two-thirds will be based on the relative proportion of the total civilian labor force residing within the workforce area to the statewide total civilian labor force, and

(2) one-third will be based on the relative proportion of the total number of unemployed individuals residing within the workforce area to the statewide total number of unemployed individuals.

§800.58. Contingency Appropriations

Any contingency appropriations to the Commission for workforce training and services are subject to this subchapter.

§800.59. Funds not Allocated.

Funds not allocated under §§800.53-800.58 of this title (relating to JOBS/TANF Program, Food Stamp Employment and Training Program, Job Training Partnership Act Program, Child Care Services, Employment Services, and Contingency Appropriations) to the workforce areas will be used by the Commission for purposes authorized by state and federal laws and regulations.

§800.60. Reallocation of Funds.

(a) Notwithstanding any other provision of this rule, the level of funding allocated to a workforce area may be modified or reallocated by the Commission due to one or more of the following:

(1) to ensure compliance with state and federal requirements applicable to the state,

(2) to ensure full utilization of the funding,

(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.

(b) JTPA funds allocated under §800.55 of this subchapter (relating to Job Training Partnership Act Program) may be deobligated from one service delivery area and reobligated to another service delivery area by the Commission in accordance with the requirements of JTPA and the Texas Workforce Commission Financial Manual for Grants and Contracts.

(c) Prior to any reallocation under subsection (a) of this section, the Commission will provide notice of the proposed reallocation and an opportunity for public comment.

(d) If a local board determines that it cannot obligate funds during the appropriate fiscal year, it may request to voluntarily deobligate funds. A request for voluntary deobligation must be approved by the Commission.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on June 9, 1997.

TRD-9707425

Esther Hajdar

Deputy Director for Legal Services

Texas Workforce Commission

Earliest possible date of adoption: July 17, 1997

For further information, please call: (512) 463-8812