

Chapter 800. GENERAL ADMINISTRATION

The Texas Workforce Commission (Commission) proposes new §§800.81-800.86, amendments to the title of Subchapter C of Chapter 800 and the repeal of §800.60 relating to Reallocation of Funds.

Background and Purpose: The Commission's allocation rules provide a single set of rules to allocate funds that are subject to Local Workforce Development Board (Board) planning and oversight. The funds are provided to Local Workforce Development Areas (workforce areas) for the purpose of meeting the workforce training and services needs of eligible populations and for meeting or exceeding statewide performance measures as set forth in the General Appropriations Act. Reallocation has occurred as necessary at varying points of time, but not pursuant to any established schedule.

The proposed reallocation rules describe an approach that builds upon existing policy and provides a schedule for the reallocation process. The rule enhancements are to: promote effective planning and oversight, discourage over-expenditure, ensure performance in association with expenditures, announce clear timetables and benchmarks, reallocate funds to populations in need, and promote conditions that avoid the need for reallocation.

Section 800.81 sets forth the purpose, intent, notice and scope provisions. The Commission intends that the level of funding allocated to the workforce area be sufficient to ensure full utilization of funding, to ensure compliance with state and federal requirements applicable to the state, to meet the state's federal participation rates, to respond to caseload changes, and to respond to unforeseen demographic or economic changes. For example, this provision would allow the Commission to consider the relationships between different categories of funding in making deobligation and reallocation decisions. Section 800.81(d) clarifies that the rules contained in this subchapter will be effective beginning on September 1, 2000.

Section 800.82 sets forth definitions of the following terms to provide clarity and consistency in how the different categories of funding are managed by the Boards: expenditures, Funds Utilization and Service Level Plan, monthly expenditure report, obligation, program year, and service level report.

Section 800.83 sets forth the provisions relating to the Funds Utilization and Service Level Plan and reports to provide a method of tracking Board expenditures and performance under the Board's Funds Utilization and Service Level Plan.

Section 800.84 sets forth required expenditure, fund-raising and obligation levels. The Commission anticipates that Boards will expend funds throughout the year consistent with the Board's Funds Utilization and Service Level Plan. The Commission also expects that each Board shall leverage and raise local funds for workforce training and services and in particular child care to access unmatched federal funds that are contingent upon Boards raising local donations, transfers, and certifications as required by the provisions of the General Appropriations Act.

The levels of reported expenditures by the end of the program year vary by category of funding based on (1) federal statutory requirements, (2) spending cycles, and (3) reasonable operating carryover budgets, based on general business practices to ensure no overspending occurs and no disruptions to client services will result at the end of a program year.

Section 800.85 sets forth provisions relating to deobligation of funds, including the methods for deobligating and the requests to deobligate from the Boards. Regarding deobligation of Child Care funds, the Commission believes that the number of child care units of service represents the best indicator of performance for purposes of managing funding, because the number of child care units of service directly reflects how much of the funding is used for direct child care services and is more accurate for purposes of deobligation than a count of the total number of children served.

Section 800.86 sets forth the criteria for Boards to be eligible for reallocated funds and the method of reallocating for each category of funding.

The Commission has provided copies of a draft reallocation policy, which sets forth the concepts upon which the proposed rules were drafted, to the Boards for comment. A conference call has been held to provide representatives of the Boards with an opportunity to respond to the draft policy. The Commission has considered input from the Boards in the drafting of the proposed rules prior to publication in the *Texas Register*.

Randy Townsend, Chief Financial Officer, has determined that for the first five years the rules are in effect, the following statements will apply:

there are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules;

there are no estimated reductions in costs to the state or to local governments expected as a result of enforcing or administering the rules;

there are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules;

there are no foreseeable implications relating to costs or revenues to the state or to local governments as a result of enforcing or administering the rules; and

there are no anticipated costs to persons who are required to comply with the rules as proposed.

Mr. Townsend has also determined that there is no anticipated adverse impact on small businesses as a result of enforcing or administering these rules because small businesses (including micro-businesses) are not required to do anything by these rules and are not regulated by these rules. The reallocation rules are intended to avoid failures to comply with specific state and federal requirements and the Commission's policies, including satisfaction of acceptable levels of expenditure and accomplishment of appropriate levels of program performance, is a result of federal and state statutory and regulatory requirements and standards. Similarly, these rules provide that no net decrease in block grant fund allocations among all Boards would result from administration of articulated, consistent, and reasonable reallocation standards and procedures.

Jean Mitchell, Director of Workforce Development, has determined that the public benefit anticipated as a result of the rules as proposed will be to maximize the use of workforce development funds and to ensure that all available funds are used to provide services by reallocating available funds to populations in need.

Mark Hughes, Director of Labor Market Information, has determined that there is no foreseeable negative impact upon employment conditions in this state as a result of these proposed rules.

Comments on the proposed rules may be submitted to Barbara Cigainero, Workforce Development Division, Texas Workforce Commission, 101 East 15th Street, Room 130BT, Austin, Texas, 78778; Fax Number (512) 463-3424; or E-mail to barbara.cigainero@twc.state.tx.us. Comments must be received by the Commission no later than 30 days from the date this proposal is published in the *Texas Register*.

Subchapter B. ALLOCATIONS AND FUNDING

40 TAC §800.60

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed 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 Commission services and activities.

The proposed repeal affects the Texas Labor Code, Title 4.

§800.60. Reallocation of Funds.

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.

Filed with the Office of the Secretary of State, on April 17, 2000.

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J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: May 28, 2000

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

Subchapter C. REALLOCATION OF FUNDS

40 TAC §§800.81-800.86

The amended title of Subchapter C and new sections are proposed 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 Commission services and activities.

The proposal affects the Texas Labor Code, Title 4.

§800.81. General 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) Intent. Notwithstanding any other provision of the rules contained in 40 TAC, Part 20, relating to the Texas Workforce Commission, except for funding for Welfare-to-Work, WIA Adult, WIA Youth and WIA Dislocated Worker, 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.

(c) Scope.

(1) This subchapter 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) Food Stamp Employment and Training;
- (D) WIA Adult;
- (E) WIA Dislocated Worker; and
- (F) WIA Youth.

(2) This subchapter does not apply to funds provided to workforce areas under a contract between the Board and the Commission for the following unless otherwise indicated:

- (A) WIA Rapid Response for Dislocated Workers;
- (B) Child Care services under contract with the Texas Department of Protective and Regulatory Services; and
- (C) Employment services, 29 U.S.C.A. §49 *et seq.* .

(3) Sections 800.81, 800.82, and 800.83 of this subchapter (relating to General Provisions; Definitions; and Required Expenditure, Fund-raising and Obligation Levels) 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.*

(d) Effective Date. This subchapter shall be effective on September 1, 2000, and applicable to any funds allocated to the Boards or not yet expended by the Boards on or after September 1, 2000.

§800.82. Definitions.

In addition to the definitions in §800.2 of this title, the following terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

- (1) Expenditures--Costs incurred for goods and services that cause decreases in net financial resources.
- (2) Funds Utilization and Service Level Plan--A Board plan that includes:
 - (A) a funds utilization schedule for accrued expenditures that demonstrates that each allocation shall be fully utilized within the Funds Utilization Plan period established by the Commission, and
 - (B) a service level schedule that lists the number of enrollments or other activities as may be determined by the Commission, to be completed during a specified period, and that demonstrates achievement of performance benchmarks consistent with the Board's contract performance goals and integrated workforce training and services plan.
- (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 by category of funding, as referenced in §800.83 of this subchapter (relating to Funds Utilization and Service Level Plan and Reports), for each month of the reporting period.
- (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.
- (5) Program year--The twelve-month period applicable to the funding as referenced in §800.83 of this subchapter. The program years are as follows:
 - (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;
 - (E) WIA Adult: July 1 - June 30;
 - (F) WIA Dislocated Worker: July 1 - June 30; and
 - (G) WIA Youth: July 1 - June 30.
- (6) Service level report--A Board report that is submitted periodically to the Commission, with information in a format determined by the Commission, on the number of:
 - (A) Child Care units of service, as well as pledged and completed local funds as specified in §809.20 of this title;
 - (B) Choices individuals participating in Temporary Assistance for Needy Families component activities, and the number of Choices participants meeting minimum work requirements who are included in calculating federal work participation rates;

(C) Welfare-to-Work participants served;

(D) Food Stamp Employment and Training mandatory work registrants served and Able Bodied Adults Without Dependents (ABAWDs) served;

(E) WIA Adult participants who received a WIA service;

(F) WIA Dislocated Worker participants who received a WIA service; and

(G) WIA Youth participants who received a WIA service.

§800.83.Funds Utilization and Service Level Plan and Reports.

(a) Planning.

(1) A Board shall annually on a schedule as determined by the Commission submit for approval a Funds Utilization and Service Level Plan that contains information regarding each category of funding as specified by the Commission, including the categories listed in §800.81(c)(1) and (3) of this subchapter (relating to General Provisions). A Board shall include the Funds Utilization and Service Level Plan as part of the Board's integrated workforce training and services plan, as well as part of the Board's annual plan modifications.

(2) A Board shall ensure that the plan describes the funds utilization and service levels for each of the categories of funding specified by the Commission for each corresponding program year.

(3) A Board which has been subject to deobligation of funds or a Board receiving reallocated funds shall submit to the Commission for approval a revised Funds Utilization and Service Level Plan within 45 days of notification of the Commission's action to deobligate or reallocate. A Board may also amend its Funds Utilization and Service Level Plan if an unforeseen event would significantly impact a Board's plan.

(b) Reporting.

(1) A Board shall submit reports that list information as required by the Commission for the reporting period as follows:

(A) a monthly expenditure report on or before the 20th calendar day of the following month;

(B) a monthly service level report on or before the 20th calendar day of the following month; and

(C) any necessary revision to the monthly expenditure report and service level report pursuant to this section within 25 calendar days after the original due date of the report.

(2) The Commission may require that a Board amend expenditure reports and service level reports as the result of Commission monitoring reviews or audits. Amended reports may be the basis for deobligation.

§800.84.Required Expenditure, Fund-raising and Obligation Levels.

(a) For Child Care (excluding unmatched federal Child Care funds that are contingent upon a Board raising local funds), Choices, and Food Stamp Employment and Training funds provided by the Commission, a Board shall meet the following expenditure levels:

(1) by the end of the fourth month following the beginning of the program year, reported expenditure of at least 90% of the planned expenditure level in the Funds Utilization and Service Level Plan;

(2) by the end of the eighth month following the beginning of the program year, reported expenditure of at least 95% of the planned expenditure level in the Funds Utilization and Service Level Plan; and

(3) by the end of the twelfth month following the beginning of the program year, reported expenditure levels of the total annual allocation of:

(A) at least 98% for Child Care, unless the Board has an allocation of less than \$5,000,000, in which case the Board shall expend at least 96% for Child Care;

(B) at least 95% for Choices; and

(C) 100% for Food Stamp Employment and Training.

(b) For Child Care funds (excluding unmatched federal Child Care funds that are contingent upon a Board raising local funds) which do not exceed 2.0% of the total contracted amount or 4.0% for Boards with allocations of less than \$5,000,000, and Choices funds which do not exceed 5.0% of the total contracted amount, that are unexpended by the close of the twelve-month program year, a Board shall expend funds by the end of the fourth month of the next program year. The Commission may deobligate and reallocate, as provided in §800.85 and §800.86 of this subchapter (relating to Deobligation of Funds and Reallocation of Funds), unexpended balances not expended in accordance with this subsection.

(c) For unmatched federal Child Care funds that are contingent upon a Board raising local funds, a Board shall meet the following performance requirements:

(1) by the end of the fourth month following the beginning of the program year, pledged donations, transfers and certifications totaling at least 100% of the amount the Board needs to raise to access all of the unmatched federal Child Care funds available to the workforce area;

(2) by the end of the eighth month following the beginning of the program year, completed donations, transfers and certifications totaling at least 60% of the amount the Board needs to raise to access all of the unmatched federal Child Care funds available to the workforce area; and

(3) by the end of the twelfth month following the beginning of the program year, completed donations, transfers and certifications totaling at least 100% of the amount the Board needs to raise to access all of the unmatched federal Child Care funds available to the workforce area.

(d) For WIA Adult, WIA Dislocated Worker, and WIA Youth funds, a Board shall meet the following reported levels for each of these categories of funding:

(1) by the end of the twelfth month following the beginning of a program year, obligation of at least 80% of the allocation for each category of funding less any amount reserved up to 10% for costs of administration; and

(2) by the end of the 24th month following the beginning of a program year, expenditure of 100% of the allocation for each category of funding.

(e) If a Board fails to achieve required expenditure, fund-raising, or obligation levels as indicated in this section, the Commission may deobligate funds from the Board.

§800.85. Deobligation of Funds.

(a) For deobligation of Child Care (excluding unmatched federal Child Care funds that are contingent upon a Board raising local funds), Choices, 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 required expenditure level described in §800.84(a) and (b) of this subchapter (relating to Required Expenditure, Fund-raising and Obligation Levels), as applicable for each category of funding for that period; and

(2) consider a Board's current service levels in determining to what degree to deobligate funds.

(b) For deobligation of unmatched federal Child Care funds that are contingent upon a Board raising local funds, the Commission may deobligate all or part of the difference a Board's actual fund-raising level and the required fund-raising level described in §800.84(c) of this subchapter.

(c) For deobligation of WIA Adult, WIA Dislocated Worker, and WIA Youth funds, 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 WIA Adult, WIA Dislocated Worker, or WIA Youth 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 WIA Adult, WIA Dislocated Worker or WIA Youth.

(d) For voluntary deobligation, a Board may submit a written request that the Commission deobligate a portion of the Board's allocation for one or more categories of funding. The Commission shall determine whether to approve requests for deobligation.

§800.86. Reallocation of Funds.

(a) Combining Funds. The Commission shall combine the funds deobligated from Boards by categories of funding for each obligation period and may reallocate funds to eligible Boards.

(b) Eligibility. To be eligible for reallocation of funds relating to a category of funding, a Board shall meet the additional criteria set forth in this section that is applicable to the category of funding and shall submit a timely written request to receive reallocated funds listing the maximum amount of reallocated funds which the Board intends to utilize.

(1) For reallocation of Child Care (excluding unmatched federal funds that are contingent upon a Board raising local funds), Choices, and Food Stamp Employment and Training funds to be eligible for a reallocation for the category of funding, a Board shall:

(A) have met expenditure levels as required by §800.84(a) and (b) of this subchapter (relating to Required Expenditure, Fund-raising and Obligation Levels), as applicable, for that period;

(B) have expended at the levels outlined in §800.84 of this subchapter, but not more than 110% of the planned funds utilization level for funding for the applicable expenditure period and program year, and not more than 100% of the workforce area's allocation for the category of funding;

(C) be within 90% of the planned service level;

(D) have demonstrated that expenditures conform to cost category limits for funding;

(E) have demonstrated the need for and ability to use additional funds;

(F) be current on expenditure and service level reporting;

(G) be current with all single audit requirements; and

(H)

not be under preventive maintenance or sanctions.

(2) For reallocation of the unmatched federal Child Care funds that are contingent upon a Board raising local funds, a Board shall have met the fund-raising requirements set out in §800.84(c) of this subchapter, for the program year from which funds were deobligated.

(3) For reallocation of WIA Adult, WIA Dislocated Worker and WIA Youth funds, to be eligible for a reallocation, a Board shall have met the obligation or expenditure requirement set out in §800.84(d) of this subchapter, for the category of funding for the program year from which funds were deobligated.

(c) Reallocation.

(1) For reallocation of Child Care, including unmatched federal funds that are contingent upon a Board raising local funds, Choices, and Food Stamp and Employment and Training funds, the Commission may reallocate funds to eligible Boards based on the applicable allocation method set forth in Subchapter B of this chapter (relating to Allocation and Funding). In determining the amount to be reallocated, the Commission may also consider:

(A) the amount specified by an eligible Board in the timely written request for additional funds;

(B) an eligible Board's ability to expend funds to address the need for services in the workforce area;

(C) an eligible Board's financial and service performance during the prior program year; and

(D) related factors as necessary to ensure that funds are fully utilized.

(2) For WIA Adult, WIA Dislocated Worker and WIA Youth funds, the Commission shall reallocate funds as provided in WIA §128 and §133.

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.

Filed with the Office of the Secretary of State, on April 17, 2000.

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J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: May 28, 2000

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