

1 [§800.71. General Deobligation and Reallocation Provisions](#)

2 [§800.72. Reporting Requirements](#)

3 [§800.73. Child Care Match Requirements and Deobligation](#)

4 [§800.74. Midyear Deobligation of Funds](#)

5 [§800.75. Second-Year WIA Deobligation of Funds](#)

6 [§800.76. Voluntary Deobligation of Funds](#)

7 [§800.77. Reallocation of Funds](#)

8 [§800.78. Midyear Deobligation of AEL Funds](#)

9 [§800.79. Voluntary Deobligation of AEL Funds](#)

10 [§800.80. Reallocation of AEL Funds](#)

11 **SUBCHAPTER C. SAVINGS INCENTIVE PROGRAM FOR STATE AGENCIES**

12 [§800.100. Definitions](#)

13 [§800.101. Procedure](#)

14 **SUBCHAPTER F. INTERAGENCY MATTERS**

15 [§800.201. Title and Purpose](#)

16 [§800.202. Memorandum of Understanding with Texas Commission for the Deaf and](#)
17 [Hard of Hearing](#)

18 [§800.203. Memorandum of Understanding with Texas Education Agency](#)

19 [§800.204. Memorandum of Understanding with Texas Department of Economic](#)
20 [Development](#)

21 [§800.205. Memoranda of Understanding with a Governmental Entity Pursuant to](#)
22 [Texas Government Code §497.0596\(a\)\(4\)](#)

23 [§800.206. Interagency Contract with the Texas Education Agency for High School](#)
24 [Equivalency Subsidy Program](#)

25
26
27
28
29

1 **SUBCHAPTER G. PETITION FOR ADOPTION OF RULES**

2 [§800.251. Title and Purpose](#)

3 [§800.252. Definitions](#)

4 [§800.253. Submission and Petition Requirements](#)

5 [§800.254. Review of Petition](#)

6 [§800.255. Commission Decision and Action](#)

7 **SUBCHAPTER H. VENDOR PROTESTS**

8 [§800.300. Definitions](#)

9 [§800.301. Vendor Protest Procedures](#)

10 **SUBCHAPTER I. ENHANCED CONTRACT MONITORING**

11 [§800.350. Purpose and Scope](#)

12 [§800.351. Enhanced Contract Monitoring Policy](#)

13 [§800.352. Reporting of Enhanced Contract Monitoring](#)

14 **SUBCHAPTER K. CONTRACT NEGOTIATION, MEDIATION, AND OTHER**
15 **ASSISTED NEGOTIATION OR MEDIATION PROCESSES**

16 [§800.451. Purpose and Applicability](#)

17 [§800.452. Definitions](#)

18 [§800.453. Contractor Claim](#)

19 [§800.454. Agency Counterclaim](#)

20 [§800.455. Request for Voluntary Disclosure of Additional Information](#)

21 [§800.456. Costs](#)

22 [§800.461. Duty to Negotiate](#)

23 [§800.462. Negotiation Timetable](#)

24

1 [§800.463. Conduct of Negotiation](#)

2 [§800.471. Mediation](#)

3 [§800.472. Agreement to Mediate](#)

4 [§800.473. Qualifications and Immunity of the Mediator](#)

5 [§800.481. Other Assisted Negotiation and Mediation Processes](#)

6 [§800.482. Methods of Other Assisted Negotiation and Mediation Processes](#)

7 [§800.491. Settlement Agreement and Approval Procedures](#)

8 [§800.492. Request for Contested Case Hearing](#)

9 **SUBCHAPTER L. WORKFORCE DIPLOMA PILOT PROGRAM**

10 [§800.500. Purpose](#)

11 [§800.501. Definitions](#)

12 [§800.502. Request for Qualifications and List of Qualified Providers](#)

13 [§800.503. Minimum Performance Standards](#)

14 [§800.504. Graduation Rate and Graduate Cost Formulas](#)

15 [§800.505. Reimbursement Rates](#)

16

17

1 Government Code §2308.261. This includes such a Board when functioning as
2 the Local Workforce Investment Board as described in the Workforce
3 Innovation and Opportunity Act (WIOA) §107 (29 USC §3122), including
4 those functions required of a youth standing committee, as provided for under
5 WIOA §107(i). The definition of Board shall apply to all uses of the term in
6 the rules contained in this part, or unless otherwise defined, relating to the
7 Texas Workforce Commission. Boards are subrecipients as defined in OMB
8 Circular A-133.
9

- 10 (5) Child Care--Child care services funded through the Commission, which may
11 include services funded under the Child Care and Development Fund, WIOA,
12 and other funds available to the Commission or a Board to provide quality
13 child care to assist families seeking to become independent from, or who are at
14 risk of becoming dependent on, public assistance while parents are either
15 working or participating in educational or training activities in accordance with
16 state and federal statutes and regulations.
17
- 18 (6) Choices--The employment and training activities created under §31.0126 of
19 the Texas Human Resources Code and funded under Temporary Assistance for
20 Needy Families (TANF) (42 USC 601 et.seq.) to assist individuals who are
21 receiving temporary cash assistance, transitioning off, or at risk of becoming
22 dependent on temporary cash assistance or other public assistance in obtaining
23 and retaining employment.
24
- 25 (7) Commission--The body of governance of the Texas Workforce Commission
26 composed of three members appointed by the governor as established under
27 Texas Labor Code §301.002 that includes one representative of labor, one
28 representative of employers, and one representative of the public. The
29 definition of Commission shall apply to all uses of the term in rules contained
30 in this part, unless otherwise defined, relating to the Texas Workforce
31 Commission.
32
- 33 (8) Formal Measures--Workforce development services performance measures
34 adopted by the governor and developed and recommended through the Texas
35 Workforce Investment Council (TWIC).
36
- 37 (9) Employment Service--A program to match qualified job seekers with
38 employers through a statewide network of one-stop career centers. (Wagner-
39 Peyser Act of 1933 (Title 29 USC, Chapter 4B) as amended by WIOA (PL
40 113-128)).
41
- 42 (10) Executive Director--The individual appointed by the Commission to
43 administer the daily operations of the Agency, which may include an
44 individual delegated by the Executive Director to perform a specific function
45 on behalf of the Executive Director.
46

- 1 (11) Historically Underutilized Business (HUB)--A business entity as defined in 34
2 TAC §20.282 that is certified by the State of Texas, has not exceeded the
3 standards for size established by 34 TAC §20.294, and has established Texas
4 as its principal place of business.
5
- 6 (12) Local Workforce Development Area (workforce area)--Workforce areas
7 designated by the governor pursuant to Texas Government Code §2308.252
8 and functioning as a Local Workforce Investment Area, as provided for under
9 WIOA §106 and §189(i)(1) (29 USC §3121 and §3249).
10
- 11 (13) One-Stop Service Delivery Network--A one-stop--based network under which
12 entities responsible for administering separate workforce investment,
13 educational, and other human resources programs and funding streams
14 collaborate to create a seamless network of service delivery that shall enhance
15 the availability of services through the use of all available access and
16 coordination methods, including telephonic and electronic methods--also
17 known as Texas Workforce Solutions.
18
- 19 (14) Performance Measure--An expected performance outcome or result.
20
- 21 (15) Performance Target--A contracted numerical value setting the acceptable and
22 expected performance outcome or result to be achieved for a performance
23 measure, including Core Outcome Formal Measures. Achievement between 95
24 and 105 percent of the established target is considered meeting the target.
25
- 26 (16) Program Year--The twelve-month period applicable to the following as
27 specified:
28
- 29 (A) Child Care: October 1 - September 30;
30
- 31 (B) Choices: October 1 - September 30;
32
- 33 (C) Employment Service: October 1 - September 30;
34
- 35 (D) Supplemental Nutrition Assistance Program Employment and Training:
36 October 1 - September 30;
37
- 38 (E) Workforce Innovation and Opportunity Act (WIOA) Vocational
39 Rehabilitation: October 1 - September 30;
40
- 41 (F) Trade Act services: October 1 - September 30;
42
- 43 (G) WIOA Adult, Dislocated Worker, and Youth formula funds: July 1 -
44 June 30;
45

1 (H) WIOA Alternative Funding for Statewide Activities: October 1 -
2 September 30;

3
4 (I) WIOA Alternative Funding for One-Stop Enhancements: October 1 -
5 September 30; and

6
7 (J) WIOA, Adult Education and Literacy: July 1 - June 30.
8

9 (17) Supplemental Nutrition Assistance Program Employment and Training (SNAP
10 E&T)--A program to assist SNAP recipients to become self-supporting through
11 participation in activities that include employment, job readiness, education,
12 and training, activities authorized and engaged in as specified by federal
13 statutes and regulations (7 USC §2011), and Chapter 813 of this title relating to
14 Supplemental Nutrition Assistance Program Employment and Training.
15

16 (18) TANF--Temporary Assistance for Needy Families, which may include
17 temporary cash assistance and other temporary assistance for eligible
18 individuals, as defined in the Personal Responsibility and Work Opportunity
19 Reconciliation Act of 1996, as amended (7 USC §2011 et seq.) and the TANF
20 statutes and regulations (42 USC §601 et seq.), 45 Code of Federal Regulations
21 (CFR) Parts 260 - 265). TANF may also include the TANF State Program
22 (TANF SP), relating to two-parent families, which is codified in Texas Human
23 Resources Code, Chapter 34.
24

25 (19) Trade Act Services--Programs authorized by the Trade Act of 1974, as
26 amended (and 20 CFR Part 617) providing services to dislocated workers
27 eligible for Trade benefits through Workforce Solutions Offices.
28

29 (20) TWIC--Texas Workforce Investment Council, appointed by the governor
30 pursuant to Texas Government Code §2308.052 and functioning as the State
31 Workforce Investment Board, as provided for under WIOA §101(e) (29 USC
32 §3111(e). In addition, pursuant to WIOA §193(a)(5) (29 USC §3253(a)(5)),
33 TWIC maintains the duties, responsibilities, powers, and limitations as
34 provided in Texas Government Code §§2308.101 - 2308.105.
35

36 (21) WIOA--Workforce Innovation and Opportunity Act--(PL 113 - 128, 29 USC
37 §3101 et seq.). References to WIOA include references to WIOA formula-
38 allocated funds unless specifically stated otherwise.
39

40 (22) WIOA Formula-Allocated Funds--Funds allocated by formula to workforce
41 areas for each of the following separate categories of services: WIOA adult,
42 dislocated worker, and youth (excluding the secretary's and governor's reserve
43 funds and rapid response funds).
44

45 (23) Workforce Solutions Offices Partner--An entity that carries out a workforce
46 investment, educational, or other human resources program or activity, and that

1 participates in the operation of the One-Stop Service Delivery Network in a
2 workforce area consistent with the terms of a memorandum of understanding
3 entered into between the entity and the Board.
4

5 *The provisions of this §800.2 adopted to be effective February 19, 2001, 26 TexReg 1566;*
6 *amended to be effective September 3, 2001, 26 TexReg 6719; amended to be effective June*
7 *30, 2002, 27 TexReg 5527; amended to be effective December 22, 2003, 28 TexReg 11357;*
8 *amended to be effective August 23, 2004, 29 TexReg 8148; amended to be effective*
9 *September 14, 2009, 34 TexReg 6341; amended to be effective February 7, 2011, 36 TexReg*
10 *592; amended to be effective February 24, 2014, 39 TexReg 1195; amended to be effective*
11 *December 16, 2018, 43 TexReg 8148; amended to be effective February 25, 2019, 44 TexReg*
12 *871*

13
14 [Return to Table of Contents](#)

15
16 **§800.3. Historically Underutilized Businesses.**

17
18 In accordance with Texas Government Code §2161.003, the Agency adopts by reference
19 the rules of the Texas Comptroller of Public Accounts, found at Title 34 TAC, §§20.281 -
20 298, concerning the Historically Underutilized Business (HUB) program. These rules were
21 promulgated by the Texas Comptroller of Public Accounts, as required under Texas
22 Government Code §2161.002.
23

24 *The provisions of this §800.3 adopted to be effective December 20, 1998, 23 TexReg 12691;*
25 *amended to be effective February 12, 2007, 32 TexReg 552; amended to be effective February*
26 *7, 2011, 36 TexReg 592; amended to be effective February 25, 2019, 44 TexReg 871; amended*
27 *to be effective October 26, 2020, 45 TexReg 7608*
28

29 [Return to Table of Contents](#)

30
31 **§800.4. Gifts.**

32
33 The Commission shall adhere to the Texas Ethics Commission's rules relating to the
34 acceptance of gifts or other benefits from persons appearing before or regulated by the
35 Commission pertaining to the Commission officers and employees and as adopted by the
36 Texas Ethics Commission at 1 TAC Part II.
37

38 *The provisions of this §800.4 adopted to be effective December 20, 1998, 23 TexReg 12691*
39

40 [Return to Table of Contents](#)

41
42 **§800.5. Tuition Assistance Program.**

43
44 (a) Scope and Purpose. The Commission provides training opportunities to enhance job
45 skills and to retain a well-qualified, trained, professional workforce dedicated to the
46 Commission's mission. The Tuition Assistance Program (TAP) training includes

1 instruction, teaching, or other education received by a state employee that is not
2 normally received by other state employees and that is designed to enhance the
3 employee's ability to perform his or her job. This section establishes eligibility and
4 related requirements for employee participation in the Commission's TAP.
5

6 (b) Eligibility. Eligibility requirements for tuition assistance include, but are not limited
7 to:

- 8 (1) continuous and full-time employment for one year at the time of application;
- 9 (2) a recommendation from the employee's supervisor;
- 10 (3) identification of the relationship of the training to the employee's position or a
11 prospective role within the Agency;
- 12 (4) any other factor deemed relevant by the executive director; and
- 13 (5) coursework or training to be obtained at an accredited institution of higher
14 education, as required by statute.

15
16
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20
21 (c) Restitution from Employees for Training Costs. The employee training is conditional
22 upon all of the following:

- 23 (1) The employee shall attend and successfully complete the training or education
24 program, including passing tests or other types of performance measures where
25 required.
- 26 (2) At the authorization of the Agency's executive director, the employee shall
27 complete and file with the Commission prior to the commencement of the
28 training, on forms prescribed by the Commission, an employee training
29 agreement that sets forth the terms and conditions of the training assistance,
30 including a provision for working for the Agency for a prescribed period of
31 time or paying back the amount of the assistance.
- 32 (3) An employee participating in the TAP must agree in writing, prior to
33 beginning the coursework or an exam, to a service commitment to the Agency.
34 An employee who receives reimbursement is obligated to fulfill a six-month
35 service commitment with the Agency.
- 36 (4) Employees who do not comply with the length of service requirement must
37 reimburse the Agency for both the cost of the training activities (prorated to
38 credit any full calendar month of employment following completion of the
39 course) and any reasonable expenses the Agency incurs in obtaining
40 restitution, including reasonable attorney's fees.
- 41
42
43
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45

1 (5) Employees who are unable to comply with the length of service requirement
2 due to extraordinary circumstances beyond their control may request that the
3 executive director waive the reimbursement of the cost of training activities.
4

5 (6) Employees approved for the TAP may flex their work schedule with the
6 approval of their supervisor if there is no negative impact on customers or
7 work production. Employees cannot use work hours for attending classes,
8 studying, taking exams, or other activities associated with the coursework or
9 exams. When such activities fall within an employee's normal work schedule,
10 the employee must use leave hours to compensate for time away from the job.
11

12 (d) Any information relating to application for and receipt of reimbursement for training
13 and education for state administrators and employees shall be reported to the
14 Commission on a quarterly basis.
15

16 *The provisions of this §800.5 adopted to be effective December 13, 1999, 24 TexReg 11126;*
17 *amended to be effective February 12, 2007, 32 TexReg 552; amended to be effective March*
18 *14, 2016, 41 TexReg 1973*
19

20 [Return to Table of Contents](#)
21

22 **§800.6. Charges for Copies of Public Records.**
23

24 (a) General Procedure. Except as otherwise specified in this chapter, for public
25 information requests under Texas Government Code, Chapter 552, the Commission
26 hereby adopts by reference the definitions, methods, procedures, and charges for
27 copies of public records required under the Office of the Attorney General rules (1
28 TAC, Part 3, Chapter 70), as may be amended.
29

30 (b) Written requests may be submitted:
31

32 (1) in person or by mail addressed to: Officer for Public Information, Texas
33 Workforce Commission, 101 East 15th Street, Austin, Texas 78778-0001; or
34

35 (2) by e-mail or facsimile to designated e-mail addresses and facsimile numbers
36 on the Agency's Web page.
37

38 (c) Standard Fees. The Commission may establish a standard fee for the handling of
39 common categories of requests that the Commission frequently receives when the
40 costs of responding to such requests are substantially similar in most cases.
41

42 (d) Adjustments for Actual Cost. In the event that the actual costs of responding to a
43 given request are significantly lower or higher than the standard fee charged for that
44 type of request, actual costs will be charged in lieu of the standard fee.
45

46 (e) Unemployment Insurance-Related Requests.

- 1
2 (1) Unemployment insurance (UI)-related records are exempt from Texas
3 Government Code, Chapter 552.
4
5 (2) No charge will be assessed to an individual or an employing unit for copies of
6 records pertaining to that individual or employing unit when the provision of
7 records is deemed by the Commission to be reasonably required for the proper
8 administration of the Texas Unemployment Compensation Act (Texas Labor
9 Code, Title 4, Subtitle A).
10
11 (3) UI-related requests for purposes other than the administration of the Texas
12 Unemployment Compensation Act shall be assessed a fee.
13
14 (f) Requests by Other Governmental Entities. Notwithstanding any other provision in
15 this section, provision of information to other governmental agencies for purposes
16 other than the administration of the Texas Unemployment Compensation Act will be
17 made only on a cost reimbursable basis, with all costs being calculated in accordance
18 with OMB Circular A-87, consistent with generally accepted accounting principles
19 or applicable regulations including, but not limited to, 20 C.F.R. §603.1 *et seq.*
20 Charges to other governmental entities can be waived only when the request is of an
21 isolated or infrequent nature and when the costs of responding to a particular request
22 are negligible.
23
24 (g) Certified Records. In addition to the fees the Commission may charge for providing
25 copies of records, the Commission shall charge a fee of \$15.00 for preparation of a
26 certification instrument, which may be attached to one or more pages of records
27 covered by the certification instrument.
28

29 *The provisions of this §800.6 adopted to be effective August 20, 2000, 25 TexReg 7779;*
30 *amended to be effective February 12, 2007, 32 TexReg 552; amended to be effective February*
31 *7, 2011, 36 TexReg 592*
32

33 [Return to Table of Contents](#)
34

35 **§800.7. Agency Vehicles.**
36

- 37 (a) Purpose and Intent. The purpose of this rule is to implement the provisions of Texas
38 Government Code §2171.1045. The intent of the Commission is to ensure that the
39 use and management of vehicles by the Agency is consistent with the State Vehicle
40 Fleet Management Plan (Plan) as adopted by the Texas Comptroller of Public
41 Accounts, Office of Vehicle Fleet Management. The Plan is available on the
42 Comptroller's Web site, or can be requested from the Agency.
43
44 (b) The Commission adopts by reference and shall implement the provisions contained
45 in the Plan as referenced in subsection (a) of this section including the following
46 general provisions on use of vehicles by the Agency.

- 1
2 (1) Vehicles, with the exception of vehicles assigned to field employees, are
3 assigned to the Agency motor pool and may be available for checkout.
4
5 (2) The Agency may assign a vehicle to an individual administrative or executive
6 employee on a regular or everyday basis only if there is a documented finding
7 that the assignment is critical to the needs and mission of the Agency.
8
9 (3) The Agency will work with the Texas Comptroller of Public Accounts to
10 identify, apply for, and if possible, use any waiver or exemption provisions
11 where the recognition of conditions specific to the Agency would further the
12 general purpose of fiscal efficiency and good business practices.
13

14 *The provisions of this §800.7 adopted to be effective February 26, 2001, 26 TexReg 1752;*
15 *amended to be effective February 12, 2007, 32 TexReg 552; amended to be effective February*
16 *7, 2011, 36 TexReg 592*
17

18 [Return to Table of Contents](#)
19

20 **§800.8. Suspension of Rules.**
21

22 The Commission may suspend the operation of one or more of the provisions in this title,
23 on either a statewide or other basis, if the Commission finds a public emergency or
24 imperative public necessity exists, and the Commission finds that the suspension will best
25 serve the public health, safety, or welfare.
26

27 *The provisions of this §800.8 adopted to be effective January 23, 2006, 31 TexReg 405*
28

29 [Return to Table of Contents](#)
30

31 **§800.9. Donations.**
32

- 33 (a) Purpose. The purpose of this section is to establish rules for the acceptance of
34 donations made to the Commission.
35
36 (b) General Authority to Accept Donations. Texas Labor Code §301.021 allows the
37 Commission to accept a donation of services or money that it determines furthers the
38 lawful objectives of the Commission.
39
40 (c) General Prohibitions Regarding Donations.
41
42 (1) Texas Labor Code §301.021(b) and (c) identify entities that the Commission is
43 not authorized to accept donations from; and
44
45 (2) Texas Government Code §575.005 states that the Commission is not
46 authorized to accept donations from entities in contested cases.

1
2 (d) Analysis of Offered Donations. The Agency, prior to the Commission's
3 consideration of a donation, shall perform an inquiry and analysis to determine if
4 there is a detrimental effect to accepting the donation. Texas Government Code
5 §551.073 allows the Commission to hold a closed meeting regarding an identified
6 detrimental effect as determined by the Agency.
7

8 (e) Acceptance of Donations. Acceptance of donations by the Commission on behalf of
9 the Agency shall:

- 10
11 (1) be in an open meeting by a majority of the voting members of the
12 Commission;
13
14 (2) be reported in the public records of the Commission and include the name of
15 the donor, and the purpose and a description of the donation;
16
17 (3) be in the form of monetary or in-kind assets; and
18
19 (4) have a minimum value of \$500.00.
20

21 (f) Donation Agreement. Following acceptance of the donation by the Commission, the
22 donor and the Agency shall execute a donation agreement, which includes:

- 23
24 (1) description of the donation, including a statement of the value;
25
26 (2) statement by the donor attesting to the donor's ownership rights in the donation
27 and the donor's authority to make the donation;
28
29 (3) signature of the donor or designee;
30
31 (4) signature of the Agency designee;
32
33 (5) restrictions on the use of the donations, if any, agreed to by the donor and
34 Commission;
35
36 (6) mailing address of the donor and principal place of business if the donor is a
37 business entity;
38
39 (7) statement identifying any official relationship between the donor and the
40 Agency; and
41
42 (8) statement advising the donor to seek legal and/or tax advice from its own legal
43 counsel.
44

45 (g) Administration of Donations. The Agency shall:
46

- 1 (1) deposit monetary donations to the credit of the Texas Workforce Commission
2 account of the state General Revenue Fund;
3
4 (2) disburse monetary donations at the Agency's direction. All monetary gifts are
5 automatically appropriated to the Commission in accordance with the General
6 Appropriations Act; and
7
8 (3) use the donations for the purpose specified by the donor, to the extent possible,
9 and in accordance with any local, state, and federal laws. In no event shall
10 donations be used for purposes not within the Agency's statutory authority.
11
12 (h) Texas Government Code, Chapter 572, governs the standards of conduct between the
13 Agency and donors.
14
15 (i) Public Records.
16
17 (1) Documents and other information pertaining to the official business of the
18 Commission are public information and are subject to the Texas Public
19 Information Act (Texas Government Code, Chapter 552).
20
21 (2) If the Commission determines an exception to the Texas Public Information
22 Act is applicable, it may seek a determination from the Attorney General of
23 Texas regarding the confidentiality of information relating to a donation before
24 releasing the requested information.
25
26 (j) Conflict of Laws. These rules shall not conflict with a requirement of a statute
27 regulating the conduct of an officer or employee of a state agency or the procedures
28 of the Agency. In the event that there appears to be a conflict between these rules and
29 a state statute, the state statute controls.
30

31 *The provisions of this §800.9 adopted to be effective December 28, 2009, 34 TexReg 9484*

32
33 [Return to Table of Contents](#)

34
35 **§800.10. Purchasing of Certain Products.**

36
37 Iron and Steel Products. The Agency complies with the requirements of Texas Government
38 Code, Chapter 2252, Subchapter G, relating to the purchase of iron or steel products made
39 in the United States for certain governmental entity projects.
40

41 *The provisions of this §800.10 adopted to be effective October 26, 2020, 45 TexReg 7608*

1
2 [Return to Table of Contents](#)
3

4 **SUBCHAPTER B. ALLOCATIONS**
5

6 **§800.51. Scope and Purpose.**
7

- 8 (a) The purpose of this rule is to interpret Texas Labor Code, §302.062, relating to the
9 allocation of available funds for workforce training and services from the Texas
10 Workforce Commission to workforce areas, as well as Texas Labor Code, §301.001
11 and §302.002, which establish the Texas Workforce Commission to operate an
12 integrated workforce development system in this state, in particular through the
13 consolidation of job training, employment, and employment-related programs, and
14 direct the executive director to consolidate the administrative and programmatic
15 functions under the authority of the Commission, to achieve efficient and effective
16 delivery of services. It is the intent of the Commission to allocate funds to workforce
17 areas for the purpose of meeting or exceeding statewide performance measures as set
18 forth in the state General Appropriations Act and consistent with the authority
19 reflected in Texas Labor Code §302.004, satisfying federal program requirements,
20 and operating an integrated workforce development system. This subchapter sets
21 forth the funding to be allocated to workforce areas and the methods and procedures
22 to be followed, in order to accomplish the consolidation and integration of workforce
23 development programs. The Commission is committed, whenever possible, to
24 allocating an amount of funds available for workforce training and services greater
25 than the minimum level set by law.
26
- 27 (b) Funds allocated or reallocated under this subchapter will only be made available
28 under the terms of a properly executed contract between the Commission and a
29 certified Board with an approved plan or an AEL grant recipient with an approved
30 contract with the Commission.
31
- 32 (c) The allocation formulas described in this subchapter will only be applicable for
33 allocations and executed contracts for a complete program year. For contract periods
34 of less than a complete program year, the allocated amounts will be negotiated
35 between the Commission and the Board or an AEL grant recipient, based upon the
36 remaining months of the program year.
37
- 38 (d) Subsections (a) - (c) of this section shall apply to all sections contained in this
39 subchapter unless a section specifically states otherwise.
40
- 41 (e) Funds available to the Commission that are not otherwise allocated or reallocated
42 under this subchapter, may be used by the Commission for purposes authorized by
43 state and federal laws and regulations.
44

1 (f) Notwithstanding any other provision of the rules contained in this part, the level of
2 funding allocated to a workforce area may be determined, modified, or reallocated
3 by the Commission for one or more of the following reasons:

- 4
- 5 (1) to ensure full utilization of the funding;
- 6
- 7 (2) to ensure compliance with state and federal requirements applicable to the
8 state;
- 9
- 10 (3) to meet the state's federal participation rates;
- 11
- 12 (4) to respond to caseload changes; or
- 13
- 14 (5) to respond to unforeseen demographic or economic changes.
- 15

16 *The provisions of this §800.51 adopted to be effective September 3, 2001, 26 TexReg 6719;*
17 *amended to be effective August 23, 2004, 29 TexReg 8148; amended to be effective February*
18 *24, 2014, 39 TexReg 1195*

19

20 [Return to Table of Contents](#)

21

22 **§800.52. Definitions.**

23

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

26

- 27 (1) Accrued Expenditures--Charges incurred during a given period for goods and
28 tangible property received and services performed that cause decreases in net
29 financial resources.
- 30
- 31 (2) All-Family Participation Rate--The percentage of all families receiving TANF
32 benefits that a state must engage in an approved work activity for a specified
33 number of hours per week as provided by the Personal Responsibility and
34 Work Opportunity Reconciliation Act of 1996, §407, as amended.
- 35
- 36 (3) Contract Closeout Settlement Package--Financial, performance, and other
37 reports required as a condition of the contract, which must be submitted when
38 one of the following conditions is met:
- 39
- 40 (A) the contract has expired;
- 41
- 42 (B) all available funds for the contract period have been paid out;
- 43
- 44 (C) all accrued expenditures chargeable to the specific contract have been
45 incurred; or
- 46

1 (D) the period of available funds has expired or been terminated.
2

3 (4) Contract Period--The length of time in which a contract for allocated funds
4 between the Commission and a Board or an AEL grant recipient is in effect
5 and during which funds may be expended for a specified purpose, unless
6 prohibited by a federal grantor agency. A contract period longer than a
7 program year shall be specified under the terms of a properly executed
8 contract.
9

10 (5) Deobligation--An action adopted by the Commission to decrease an amount
11 for a specific program and contract period in a contract with a Board or an
12 AEL grant recipient for allocated funds, on the basis of provisions as set forth
13 in §800.73 and §800.74 of this subchapter.
14

15 (6) Equal Base Amount--An amount equivalent to .10 percent (one-tenth of one
16 percent) of a total allocation, which shall be provided equally to each
17 workforce area.
18

19 (7) Hold Harmless/Stop Gain--A procedure that assures that a relative proportion
20 of an allocation to a workforce area is not below 90 percent of the
21 corresponding proportion for the past two years, or that the current year
22 proportion is not above 125 percent of the prior two-year relative proportion.
23

24 (8) Monthly expenditure report--A written or electronically submitted report by a
25 Board or an AEL grant recipient that contains information regarding services
26 for each category of funding allocated by the Commission, and in which the
27 Board or an AEL grant recipient lists expenditures and obligations by category
28 of funding.
29

30 (9) Obligation--A debt established by a legally binding contract, letter of
31 agreement, sub-grant award, or purchase order, which has been executed prior
32 to the end of a contract period, for goods and services provided by the end of
33 the contract period, and which will be liquidated 60 calendar days after the end
34 of a contract period, unless such definition is superceded by federal
35 requirements.
36

37 (10) Relative proportion of the program year--The corresponding part of the
38 program year that is used to compare expenditures. That is, if 50 percent of the
39 program year has transpired, then the relative proportion of the program year is
40 50 percent.

- 1
2 (11) WIA Formula Allocated Funds--Funds allocated by formula to workforce
3 areas for each of the following separate categories of funding: WIA Adult,
4 Dislocated Worker, and Youth.
5

6 *The provisions of this §800.52 adopted to be effective September 3, 2001, 26 TexReg 6719;*
7 *amended to be effective August 23, 2004, 29 TexReg 8148; amended to be effective July 12,*
8 *2006, 31 TexReg 5465; amended to be effective February 24, 2014, 39 TexReg 1195*
9

10 [Return to Table of Contents](#)

11
12 **§800.53. Choices.**

- 13
14 (a) Funds available to the Commission to provide Choices services will be allocated to
15 the workforce areas using a need-based formula, in order to meet state and federal
16 requirements, as set forth in subsection (b) of this section.
17
18 (b) At least 80 percent of the Choices funds will be allocated to the workforce areas on
19 the basis of:
20
21 (1) the relative proportion of the total unduplicated number of all families with
22 Choices work requirements residing within the workforce area during the most
23 recent calendar year to the statewide total unduplicated number of all families
24 with Choices work requirements;
25
26 (2) an equal base amount; and
27
28 (3) the application of a hold harmless/stop gain procedure.
29
30 (c) No more than 10 percent of Choices funds expended as part of a workforce area's
31 allocation shall be used for administrative costs, as defined by the appropriate federal
32 regulations and Commission policy.
33

34 *The provisions of this §800.53 adopted to be effective August 27, 1997, 22 TexReg 8057;*
35 *amended to be effective January 3, 2001, 25 TexReg 13005; amended to be effective August*
36 *23, 2004, 29 TexReg 8148; amended to be effective February 7, 2011, 36 TexReg 592*
37

38 [Return to Table of Contents](#)

39
40 **§800.54. Supplemental Nutrition Assistance Program Employment and Training.**

- 41
42 (a) Funds available to the Commission to provide SNAP E&T services under 7
43 U.S.C.A. §2015(d) will be allocated to the workforce areas using a need-based
44 formula, as set forth in subsection (b) of this section.
45

- 1 (b) At least 80% of the SNAP E&T funds will be allocated to the workforce areas on the
2 basis of:
3
4 (1) of the relative proportion of the total unduplicated number of mandatory work
5 registrants receiving SNAP benefits residing within the workforce area during
6 the most recent calendar year to the statewide total unduplicated number of
7 mandatory work registrants receiving SNAP benefits;
8
9 (2) an equal base amount; and
10
11 (3) the application of a hold harmless/stop gain procedure.
12
13 (c) No more than 10% of the funds expended as part of a workforce area's allocation
14 shall be used for administrative costs, as defined by federal regulations and
15 Commission policy.
16

17 *The provisions of this §800.54 adopted to be effective August 27, 1997, 22 TexReg 8057;*
18 *amended to be effective January 3, 2001, 25 TexReg 13005; amended to be effective August*
19 *23, 2004, 29 TexReg 8148; amended to be effective September 14, 2009, 34 TexReg 6341*
20

21 [Return to Table of Contents](#)

22
23 **§800.57. Employment Services.**

- 24
25 (a) Employment Services funds available to the Commission to provide Employment
26 Services under §7(a) of the Wagner-Peyser Act (29 U.S.C.A. Chapter 4B) will be
27 utilized by the Commission as set forth in subsection (b) of this section.
28
29 (b) At least 80% of the Employment Services funds under §7(a) of the Wagner-Peyser
30 Act (29 U.S.C.A. Chapter 4B, including §49(c)) will be utilized by the Commission
31 within the workforce areas according to the established federal formula, as follows:
32
33 (1) Two-thirds will be based on the relative proportion of the total civilian labor
34 force residing within the workforce area to the statewide total civilian labor
35 force.;
36
37 (2) One-third will be based on the relative proportion of the total number of
38 unemployed individuals residing within the workforce area to the statewide
39 total number of unemployed individuals; and
40
41 (3) the application of a hold harmless/stop gain procedure.

- 1
2 (c) No more than 10% of the funds expended as part of a workforce area's allocation
3 shall be used for administrative costs, as defined by appropriate federal regulations
4 and Commission policy.
5

6 *The provisions of this §800.57 adopted to be effective August 27, 1997, 22 TexReg 8057;*
7 *amended to be effective January 3, 2001, 25 TexReg 13005; amended to be effective August*
8 *23, 2004, 29 TexReg 8148*
9

10 [Return to Table of Contents](#)

11
12 **§800.58. Child Care.**

- 13
14 (a) Funds available to the Commission for child care services will be allocated to the
15 workforce areas using need-based formulas, as set forth in this section.
16
17 (b) Child Care and Development Fund (CCDF) Mandatory Funds authorized under the
18 Social Security Act §418(a)(1), as amended, together with state general revenue
19 Maintenance of Effort (MOE) Funds, Social Services Block Grant funds, TANF
20 funds, and other funds designated by the Commission for child care (excluding any
21 amounts withheld for state-level responsibilities) will be allocated on the following
22 basis:
23
24 (1) 50 percent will be based on the relative proportion of the total number of
25 children under the age of five years old residing within the workforce area to
26 the statewide total number of children under the age of five years old, and
27
28 (2) 50 percent will be based on the relative proportion of the total number of
29 people residing within the workforce area whose income does not exceed 100
30 percent of the poverty level to the statewide total number of people whose
31 income does not exceed 100 percent of the poverty level.
32
33 (c) CCDF Matching Funds authorized under the Social Security Act §418(a)(2), as
34 amended, together with state general revenue matching funds and estimated
35 appropriated receipts of donated funds, will be allocated according to the relative
36 proportion of children under the age of 13 years old residing within the workforce
37 area to the statewide total number of children under the age of 13 years old.
38
39 (d) CCDF Discretionary Funds authorized under the Child Care and Development Block
40 Grant Act of 1990 §658B, as amended, will be allocated according to the relative
41 proportion of the total number of children under the age of 13 years old in families
42 whose income does not exceed 150 percent of the poverty level residing within the
43 workforce area to the statewide total number of children under the age of 13 years
44 old in families whose income does not exceed 150 percent of the poverty level.
45

1 (e) The following provisions apply to the funds allocated in subsections (b) - (d) of this
2 section:

- 3
- 4 (1) Sufficient funds must be used for direct child care services to ensure
5 Commission-approved performance targets are met.
- 6
- 7 (2) Children eligible for Transitional and Choices child care shall be served on a
8 priority basis to enable parents to participate in work, education, or training
9 activities.
- 10
- 11 (3) No more than 5 percent of the total expenditure of funds may be used for
12 administrative expenditures as defined in federal regulations contained in 45
13 C.F.R. §98.52, as may be amended unless the total expenditures for a
14 workforce area are less than \$5,000,000. If a workforce area has total
15 expenditures of less than \$5,000,000, then no more than \$250,000 may be used
16 for administrative expenditures.
- 17
- 18 (4) Each Board shall set the amount of the total expenditure of funds to be used for
19 quality activities consistent with federal and state statutes and regulations.
- 20
- 21 (5) The Board shall comply with any additional requirements adopted by the
22 Commission or contained in the Board contract.
- 23
- 24 (6) Allocations of child care funds will include applications of hold harmless/stop
25 gain procedures.
- 26

27 *The provisions of this §800.58 adopted to be effective September 3, 2001, 26 TexReg 6719;*
28 *amended to be effective August 23, 2004, 29 TexReg 8148; amended to be effective September*
29 *14, 2009, 34 TexReg 6341; amended to be effective February 7, 2011, 36 TexReg 592*

30
31 [Return to Table of Contents](#)

32
33 **§800.63. Workforce Investment Act (WIA) Allocations.**

- 34
- 35 (a) Definitions. The following words and terms when used in this section, shall have the
36 following meanings, unless the context clearly indicates otherwise.
- 37
- 38 (1) Area of substantial unemployment--As defined in WIA §127(b)(2)(B) (29
39 U.S.C.A. §2852(b)(2)(B)) and WIA §132(b)(1)(B)(v)(III) (29 U.S.C.A.
40 §2862(b)(1)(B)(v)(III)).
- 41
- 42 (2) Disadvantaged adult--As defined in WIA §132(b)(1)(B)(v)(IV) (29 U.S.C.A.
43 §2862(b)(1)(B)(v)(IV)).
- 44
- 45 (3) Disadvantaged youth--As defined in WIA §127(b)(2)(C) (29 U.S.C.A.
46 §2852(b)(2)(C)).

1
2 (b) Scope and Authority. Funds available to the Commission under Title I of WIA for
3 youth activities, adult employment and training activities, and dislocated worker
4 employment and training activities shall be allocated to workforce areas or reserved
5 for statewide activities in accordance with:

6
7 (1) the provisions of prior consistent state law as authorized by WIA
8 §194(a)(1)(A) (29 U.S.C.A. §2944(a)(1)(A)), including but not limited to
9 Texas Labor Code §302.062, as amended, and Subchapter B of this title
10 (relating to Allocations and Funding);

11
12 (2) the WIA and related federal regulations as amended; and

13
14 (3) the WIA State Plan.

15
16 (c) Reserves and Allocations for Youth and Adult Employment and Training Activities.
17 The Commission shall reserve no more than 15% and shall allocate to workforce
18 areas at least 85% of the youth activities and adult employment and training
19 activities allotments from the United States Department of Labor.

20
21 (d) Reserves and Allocations for Dislocated Worker Employment and Training
22 Activities. The Commission shall allocate the dislocated worker employment and
23 training allotment in the following manner:

24
25 (1) reserve no more than 15% for statewide workforce investment activities;

26
27 (2) reserve no more than 25% for state level rapid response and additional local
28 assistance activities and determine the proportion allocated to each activity;
29 and

30
31 (3) allocate at least 60% to workforce areas.

32
33 (e) State Adopted Elements, Formulas, and Weights. The Commission shall implement
34 the following elements, formulas, and weights adopted for Texas in the WIA State
35 Plan in allocating WIA funds to workforce areas.

36
37 (1) WIA adult employment and training activities funds not reserved by the
38 Commission under §800.63(c) of this section shall be allocated to the
39 workforce areas as provided in WIA §132(b)(1)(B) and §133(b)(2) (29
40 U.S.C.A. §2863(b)(2)) based on the following:

41
42 (A) 33 1/3 percent on the basis of the relative number of unemployed
43 individuals in areas of substantial unemployment in each workforce area,
44 compared to the total number of unemployed individuals in areas of
45 substantial unemployment in the State;

- 1 (B) 33 1/3 percent on the basis of the relative excess number of unemployed
2 individuals in each workforce area, compared to the total excess number
3 of unemployed individuals in the State; and
4
- 5 (C) 33 1/3 percent on the basis of the relative number of disadvantaged
6 adults in each workforce area, compared to the total number of
7 disadvantaged adults in the State.
8
- 9 (2) WIA dislocated worker employment and training activities funds not reserved
10 by the State under §800.63(d) of this section shall be allocated to the
11 workforce areas as provided in WIA §133(b)(2) (29 U.S.C.A. §2863(b)(2))
12 based on the following factors:
13
- 14 (A) insured unemployment;
15
16 (B) average unemployment;
17
18 (C) Worker Adjustment and Retaining Notification Act (29 U.S.C.A. §2101
19 *et seq.*) data;
20
21 (D) declining industries;
22
23 (E) farmer-rancher economic hardship; and
24
25 (F) long-term unemployment.
26
- 27 (3) WIA youth activities funds not reserved by the Commission under §800.63(c)
28 of this section shall be allocated to the workforce areas as provided in WIA
29 §128(b)(2) (29 U.S.C.A. §2853(b)(2)) based on the following:
30
- 31 (A) 33 1/3 percent on the basis of the relative number of unemployed
32 individuals in areas of substantial unemployment in each workforce area,
33 compared to the total number of unemployed individuals in all areas of
34 substantial unemployment in the State;
35
- 36 (B) 33 1/3 percent on the basis of the relative excess number of unemployed
37 individuals in each workforce area, compared to the total excess number
38 of unemployed individuals in the State; and
39
- 40 (C) 33 1/3 percent on the basis of the relative number of disadvantaged youth
41 in each workforce area, compared to the total number of disadvantaged
42 youth in the State.
43
- 44 (f) In making allocations of WIA formula funds, the Commission will apply hold
45 harmless procedures, as set forth in federal regulations (20 CFR 667.135).
46

- 1 (g) No more than 10% of the funds expended as part of a workforce area's allocation
2 shall be used for administrative costs, as defined by federal regulations and
3 Commission policy.
4
- 5 (h) Reserved Funds. The Commission shall make available the funds reserved under
6 §§800.63(c) and 800.63(d)(1) of this section to provide required and, if funds are
7 available, allowable statewide activities as outlined in WIA §§129 and 134 (29
8 U.S.C.A. §§2854 and 2864).
9
- 10 (i) The Commission may allocate such proportion of available WIA Alternative Funding
11 for Statewide Activities as it determines appropriate, utilizing a distribution
12 methodology that is based on the proportionality of all amounts of WIA formula
13 funds allocated during the same program year, as well as an equal base amount.
14
- 15 (j) The Commission may allocate such amounts of available WIA Alternative Funding
16 for Statewide Activities as funding for One-Stop Enhancements, as it determines
17 appropriate.
18
- 19 (k) Expenditure Level for Statewide Activity Funding. A Board shall demonstrate an 80
20 percent expenditure level of prior year WIA allocated funds in order to be eligible to
21 receive WIA Alternative Funding for Statewide Activities and WIA Alternative
22 Funding for One-Stop Enhancements. The Commission may reduce the amount of
23 WIA Alternative Funding for Statewide Activities and WIA Alternative Funding for
24 One-Stop Enhancements if a Board fails to achieve an 80 percent expenditure level
25 of prior year WIA formula allocated funds.
26

27 *The provisions of this §800.63 adopted to be effective September 12, 2000, 25 TexReg 9014;*
28 *amended to be effective August 23, 2004, 29 TexReg 8148*
29

30 [Return to Table of Contents](#)
31

32 **§800.65. Project Reintegration of Offenders.**
33

- 34 (a) Funds available to the Commission to provide Project Reintegration of Offenders
35 (Project RIO) services shall be allocated to workforce areas using a need-based
36 formula, as set forth in subsection (b) of this section.
37
- 38 (b) At least 80 percent of the Project RIO funds will be allocated to workforce areas on
39 the basis of:
40
- 41 (1) the relative proportion of the total unduplicated number of parolees residing
42 within the workforce area during the most recent calendar year to the statewide
43 total unduplicated number of parolees;
44
- 45 (2) an equal base amount; and
46

1 (3) the application of a hold harmless/stop gain procedure.

2
3 (c) No more than 10 percent of the funds expended as part of a workforce area's
4 allocation shall be used for administrative costs, as defined by federal regulations
5 and Commission policy.
6

7 *The provisions of this §800.65 adopted to be effective August 23, 2004, 29 TexReg 8148;*
8 *amended to be effective February 7, 2011, 36 TexReg 592*
9

10 [Return to Table of Contents](#)

11
12 **§800.66. Trade Act Services.**

13
14 (a) Funds available to the Commission to provide Trade Act services shall be provided
15 to workforce areas as set forth in this section.
16

17 (b) Amounts for training and services for trade-affected workers, consistent with statute
18 and regulations, will be made available to workforce areas as follows. The
19 Commission shall approve:
20

21 (1) an initial Trade Adjustment Assistance (TAA) funding amount for each
22 workforce area, on an annual basis; and
23

24 (2) the factors to be considered for distribution of additional funds, which may
25 include:
26

27 (A) number of individuals in TAA-approved training;

28 (B) number of Trade-certified layoffs in the workforce area;

29 (C) number of employees from Trade-certified companies;

30 (D) layoffs identified through the Worker Adjustment and Retraining
31 Notification Act process in the workforce area;
32

33 (E) demonstrated need;

34 (F) the cost of training; and
35

36 (G) other factors as determined by the Commission.
37

38
39 (c) Evaluations will be made periodically as to the sufficiency and reasonableness of
40 amounts made available to each workforce area, expenditures for training, and
41 amounts reported for administration. The Agency shall make additional distributions,
42 based on the evaluations and upon requests by Boards, using the factors approved by
43 the Commission.
44
45
46

1
2 (d) In the event that a determination is made that Trade Act funding available to the
3 Commission may be insufficient to meet all qualified needs for the remainder of the
4 year at any time during the program year, the Agency will:

- 5
6 (1) rely on the evaluations referenced in subsection (c) of this section to estimate
7 short-term needs;
8
9 (2) make recommendations for deobligation and redistribution between workforce
10 areas; and
11
12 (3) make requests for additional TAA funding from the U.S. Department of Labor
13 as appropriate.
14

15 (e) No more than 15 percent of the funds expended for Trade Act training, services, and
16 other allowable program activities shall be used for administrative costs, as defined
17 by federal regulations. The Commission shall establish policy limitations for the
18 expenditure of administrative funds at the state and Board levels.
19

20 *The provisions of this §800.66 adopted to be effective August 23, 2004, 29 TexReg 8148;*
21 *amended to be effective February 7, 2011, 36 TexReg 592*
22

23 [Return to Table of Contents](#)
24

25 **§800.68. Adult Education and Literacy.**
26

27 (a) AEL funds available to the Commission to provide services under the federal Adult
28 Education and Family Literacy Act (AEFLA), WIOA Title II, together with
29 associated state general revenue matching funds and federal TANF funds--together
30 with any state general revenue funds appropriated as TANF maintenance-of-effort--
31 will be used by the Commission, as set forth in subsections (b) - (f) of this section.
32 Prior to any grant recipient receiving notice of an award, the Commission shall
33 review and approve the award of grant funds to be issued under this program.
34

35 (b) At least 82.5 percent of the federal funds constituting the total state award of
36 AEFLA state grants--including amounts allotted to the eligible agency having a state
37 plan, as provided by AEFLA §211(c) and amounts provided to the eligible agency
38 under §243 for English Literacy/Civics (EL/Civics)--will be allocated by the
39 Commission to the workforce areas. From the amount allotted to the eligible agency
40 having a state plan, as provided by AEFLA §211(c), the Commission will allocate
41 amounts to the workforce areas according to the established federal formula, as
42 follows:
43

- 44 (1) 100 percent will be based on:
45

- 1 (A) the relative proportion of individuals residing within each workforce area
2 who are at least 18 years of age, do not have a secondary school diploma
3 or its recognized equivalent, and are not enrolled in secondary school,
4 during the most recent period for which statistics are available;
5
6 (B) an equal base amount; and
7
8 (C) the application of a hold-harmless/stop-gain procedure.
9
- 10 (2) No more than 5 percent of the funds expended as part of this workforce area
11 allocation shall be used for administrative costs, as defined by AEFLA,
12 provided, however, that the Special Rule outlined in AEFLA §233(b) shall
13 apply with effective justification, as appropriate.
14
- 15 (3) No more than 10 percent of this allocation shall be available for expenditure
16 within each workforce area on the basis of the achievement of performance
17 benchmarks, as set forth in subsection (f) of this section.
18
- 19 (c) At least 80 percent of the state general revenue matching funds associated with the
20 allotment of federal funds to the eligible agency having a state plan, as provided by
21 AEFLA §211(c), will be allocated by the Commission to the workforce areas
22 according to the established federal formula, as follows:
23
- 24 (1) 100 percent will be based on:
25
- 26 (A) the relative proportion of individuals residing within each workforce area
27 who are at least 18 years of age, do not have a secondary school diploma
28 or its recognized equivalent, and are not enrolled in secondary school,
29 during the most recent period for which statistics are available;
30
- 31 (B) an equal base amount; and
32
- 33 (C) the application of a hold-harmless/stop-gain procedure.
34
- 35 (2) No more than 15 percent of the funds expended as part of this workforce area
36 allocation shall be used for administrative costs, as defined by Commission
37 policy.
38
- 39 (3) No more than 10 percent of this allocation shall be available for expenditure
40 within each workforce area on the basis of the achievement of performance
41 benchmarks, as set forth in subsection (f) of this section.
42
- 43 (d) At least 82.5 percent of the federal funds provided to the eligible agency from
44 amounts under AEFLA §243 for EL/Civics will be allocated by the Commission
45 among the workforce areas according to the established federal formula, as follows:
46

- 1 (1) The relative proportion based on:
2
3 (A) 65 percent of the average number of legal permanent residents during the
4 most recent 10-year period, available from U.S. Citizenship and
5 Immigration Services data; and
6
7 (B) 35 percent of the average number of legal permanent residents during the
8 most recent three-year period, available from U.S. Citizenship and
9 Immigration Services data;
10
11 (2) a base amount of 1 percent for each workforce area; and
12
13 (3) the application of a hold-harmless/stop-gain procedure.
14
15 (4) No more than 5 percent of the funds expended as part of this workforce area
16 allocation shall be used for administrative costs, as defined by AEFLA.
17
18 (5) No more than 10 percent of this allocation shall be available for expenditure
19 within each workforce area on the basis of the achievement of performance
20 benchmarks, as set forth in subsection (f) of this section.
21
22 (e) At least 80 percent of federal TANF funds associated with the AEL program--
23 together with any state general revenue funds appropriated as TANF maintenance-
24 of-effort--will be allocated by the Commission to the workforce areas according to a
25 need-based formula, as follows:
26
27 (1) 100 percent will be based on:
28
29 (A) the relative proportion of the unduplicated number of TANF adult
30 recipients with educational attainment of less than a secondary diploma
31 during the most recently completed calendar year;
32
33 (B) an equal base amount; and
34
35 (C) the application of a hold-harmless/stop-gain procedure.
36
37 (2) No more than 15 percent of the funds expended as part of this workforce area
38 allocation shall be used for administrative costs, as defined by federal
39 regulations and Commission policy.
40
41 (3) No more than 10 percent of this allocation shall be available for expenditure
42 within each workforce area on the basis of the achievement of performance
43 benchmarks, as set forth in subsection (f) of this section.
44
45 (f) AEL performance accountability benchmarks shall be established to coincide with
46 performance measures and reports, or other periods, as determined by the

1 Commission. Levels of performance shall, at a minimum, be expressed in an
2 objective, quantifiable, and measurable form, and show continuous improvement.

3
4 (g) Performance accountability benchmarks shall:

5
6 (1) include measures for high school equivalency program or ability-to-benefit
7 program enrollment and achievement, as outlined in paragraph (2) of this
8 subsection. A postsecondary ability-to-benefit program, as outlined in
9 paragraphs (2) and (3) of this subsection, is a postsecondary education or
10 training program that:

11
12 (A) results in a recognized postsecondary credential; and

13
14 (B) enrolls AEL eligible participants who:

15
16 (i) do not have a high school diploma or recognized equivalency;

17
18 (ii) qualify for federal student financial aid eligibility under the federal
19 Ability-to-Benefit provisions enacted in §484(d) of the Higher
20 Education Act of 1965; and

21
22 (iii) demonstrate on an assessment instrument that the participant can
23 pass college-level courses with some support;

24
25 (2) include measures that require:

26
27 (A) at least 25 percent of all participants served in the program year to be
28 enrolled in a high school equivalency or postsecondary ability-to-benefit
29 program; and

30
31 (B) at least 70 percent of participants who were in a high school equivalency
32 or postsecondary ability-to-benefit program during the program year and
33 exited during the program year to achieve either a high school
34 equivalency or a recognized postsecondary credential; and

35
36 (3) be approved by the Commission each program year for milestones toward
37 meeting high school equivalency program or postsecondary ability-to-benefit

1 program enrollment and achievement as outlined in paragraph (2) of this
2 subsection.

3
4 *The provisions of this §800.68 adopted to be effective February 24, 2014, 39 TexReg 1195;*
5 *amended to be effective July 20, 2016, 41 TexReg 5230; amended to be effective December*
6 *21, 2020, 45 TexReg 9243*

7
8 [Return to Table of Contents](#)

9
10 **§800.71. General Deobligation and Reallocation Provisions.**

11
12 (a) Purpose. The purpose of this rule is to promote effective service delivery, financial
13 planning, and management to ensure full utilization of funding, and to reallocate
14 funds to populations in need.

15
16 (b) Scope. Sections 800.71 - 800.77 of this subchapter shall apply to funds provided to
17 workforce areas under a contract between the Board or an AEL grant recipient and
18 the Commission for the following categories of funding:

- 19
20 (1) Adult Education and Literacy
21
22 (2) Child Care
23
24 (3) Choices
25
26 (4) Employment Service
27
28 (5) SNAP E&T
29
30 (6) Project RIO
31
32 (7) WIA Alternative Funding for Statewide Activities
33
34 (8) WIA Alternative Funding for One-Stop Enhancements

35
36 *The provisions of this §800.71 adopted to be effective September 3, 2001, 26 TexReg 6719;*
37 *amended to be effective August 23, 2004, 29 TexReg 8148; amended to be effective July 12,*
38 *2006, 31 TexReg 5465; amended to be effective September 14, 2009, 34 TexReg 6341;*
39 *amended to be effective February 7, 2011, 36 TexReg 592; amended to be effective February*
40 *24, 2014, 39 TexReg 1195*

41
42 [Return to Table of Contents](#)

43
44 **§800.72. Reporting Requirements.**

- 1 (a) A Board or an AEL grant recipient shall submit a monthly financial report, including
2 accrued expenditures and obligations, on or before the 20th calendar day of the
3 following month that list information as required by the Commission for the
4 reporting period.
5
- 6 (b) The Commission may require that a Board or an AEL grant recipient amend
7 expenditure reports as the result of Commission reviews, audits, or other evaluations.
8
- 9 (c) A Board or an AEL grant recipient shall submit a contract closeout settlement
10 package on or before 60 days following the end of the contract period.
11
- 12 (d) The Commission may suspend payments, advances, or reimbursements to Boards or
13 an AEL grant recipient in the cash draw system if required financial reports or
14 contract closeout settlement packages are not submitted by the deadline.
15
- 16 (e) The Agency's executive director may approve a Board's or an AEL grant recipient's
17 request of extension for the submission of a required financial report or contract
18 closeout settlement package, if such extension request is received on a timely basis
19 with sufficient justification.
20

21 *The provisions of this §800.72 adopted to be effective September 3, 2001, 26 TexReg 6719;*
22 *amended to be effective August 23, 2004, 29 TexReg 8148; amended to be effective February*
23 *24, 2014, 39 TexReg 1195*
24

25 [Return to Table of Contents](#)
26

27 **§800.73. Child Care Match Requirements and Deobligation.**
28

- 29 (a) A Board shall meet the following requirements for unmatched federal child care
30 funds that are contingent upon a Board securing local funds.
31
- 32 (1) By the end of the fourth month following the beginning of the program year, a
33 Board shall secure donations, transfers, and certifications totaling at least 100
34 percent of the amount it needs to secure in order to access the unmatched
35 federal child care funds available to the workforce area at the beginning of the
36 program year.
37
- 38 (2) Throughout the program year and by the end of the twelfth month, a Board
39 shall ensure completion of all donations, transfers, and certifications consistent
40 with the contribution schedules and payment plans specified in the local
41 agreements.
42
- 43 (3) The Commission may withhold the federal matching amounts associated with
44 local match that are not completed after the end of the twelfth month, as set
45 forth in paragraph (2) of this subsection.
46

- 1 (b) The Commission may deobligate, at any time following the fourth month of the
2 program year, all or part of the difference between a Board's actual level of secured
3 and completed match and the level of performance that is required, as set forth in
4 subsection (a) of this section.
5

6 *The provisions of this §800.73 adopted to be effective July 12, 2006, 31 TexReg 5465;*
7 *amended to be effective February 7, 2011, 36 TexReg 592*
8

9 [Return to Table of Contents](#)

10
11 **§800.74. Midyear Deobligation of Funds.**
12

- 13 (a) The Commission may deobligate funds from a workforce area during the program
14 year if a workforce area is not meeting the expenditure thresholds set forth in
15 subsection (b) of this section.
16
- 17 (1) Workforce areas that fail to meet the expenditure thresholds set forth in
18 subsection (b) of this section at the end of months five, six, seven, or eight of
19 the program year (i.e., midyear) will be reviewed to determine the causes for
20 the underexpenditure of funds, except as set forth in subsection (d) of this
21 section.
22
- 23 (2) The Commission shall not deobligate more than the difference between a
24 workforce area's actual expenditures and the amount corresponding to the
25 relative proportion of the program year.
26
- 27 (3) The Commission shall not deobligate funds from a workforce area that failed
28 to meet the expenditure thresholds set forth in subsection (b) of this section, if
29 within 60 days prior to the potential deobligation period the Commission
30 executes a contract amendment for a supplemental allocation or reallocation of
31 funds in the same program funding category.
32
- 33 (b) The Commission may deobligate the following funds midyear, as set forth in
34 subsection (a) of this section, if a workforce area fails to achieve the expenditure of
35 an amount corresponding to 90 percent or more of the relative proportion of the
36 program year:
37
- 38 (1) Child care (with the exception of unmatched federal child care funds that are
39 contingent upon a workforce area securing local funds, as set forth in §800.73
40 of this subchapter)
41
- 42 (2) Choices
43
- 44 (3) Employment Service
45
- 46 (4) SNAP E&T

- 1
- 2 (5) Project RIO
- 3
- 4 (6) WIA Alternative Funding for Statewide Activities
- 5
- 6 (7) WIA Alternative Funding for One-Stop Enhancements
- 7

8 (c) A workforce area subject to deobligation for failure to meet the requirements set
9 forth in this section shall, upon request by the Commission, submit a written
10 justification with a copy to the Board Chair. The written justification shall provide
11 sufficient detail regarding the actions a workforce area will take to address its
12 deficiencies, including:

- 13
- 14 (1) expansion of services proportionate to the available resources;
- 15
- 16 (2) projected service levels and related performance;
- 17
- 18 (3) reporting outstanding obligations; and
- 19
- 20 (4) any other factors a workforce area would like the Commission to consider.
- 21

22 (d) To the extent this section is found not to comply with federal requirements, or
23 should any related federal waivers expire, the Commission will be subject to federal
24 requirements in effect, as applicable.

25
26 *The provisions of this §800.74 adopted to be effective September 14, 2009, 34 TexReg 6341;*
27 *amended to be effective February 7, 2011, 36 TexReg 592*

28
29 [Return to Table of Contents](#)

30
31 **§800.75. Second-Year WIA Deobligation of Funds.**

- 32
- 33 (a) In each month of the second year in which the WIA formula funds are available, the
34 Commission may deobligate funds if a workforce area's unobligated balance of WIA
35 formula funds exceeds 20 percent of the allocation for each category of WIA formula
36 funds for the program year.
- 37
- 38 (b) The Commission shall not deobligate more than the difference between a workforce
39 area's actual expenditures and the amount of unobligated funds that exceed 20
40 percent of the allocation for each category of WIA formula funds for the program
41 year.
- 42
- 43 (c) The Commission shall not deobligate funds from a workforce area that failed to meet
44 the expenditure thresholds set forth in subsection (a) of this section if within 60 days
45 prior to the potential deobligation period, the Commission executes a contract

1 amendment for a supplemental allocation or reallocation of funds in the same
2 program funding category.

3
4 *The provisions of this §800.75 adopted to be effective September 14, 2009, 34 TexReg 6341;*
5 *amended to be effective February 7, 2011, 36 TexReg 592*

6
7 [Return to Table of Contents](#)

8
9 **§800.76. Voluntary Deobligation of Funds.**

10
11 To request a voluntary deobligation of funds allocated to the workforce area, a workforce
12 area's executive director shall submit a written request to the Commission with a copy to
13 the Board Chair.

14
15 *The provisions of this §800.76 adopted to be effective September 14, 2009, 34 TexReg 6341*

16
17 [Return to Table of Contents](#)

18
19 **§800.77. Reallocation of Funds.**

20
21 (a) Reallocation. A workforce area may be eligible for reallocation of the following
22 funds allocated by the Commission:

- 23
24 (1) Child care (including unmatched federal child care funds that are contingent
25 upon a workforce area securing local funds)
- 26
27 (2) Choices
- 28
29 (3) Employment Service
- 30
31 (4) SNAP E&T
- 32
33 (5) Project RIO
- 34
35 (6) WIA Formula Funds
- 36
37 (7) WIA Alternative Funding for Statewide Activities
- 38
39 (8) WIA Alternative Funding for One-Stop Enhancements

40
41 (b) Eligibility.

- 42
43 (1) For a workforce area to be eligible for a reallocation of child care funds
44 (excluding unmatched federal funds that are contingent upon a workforce area
45 securing local funds), and the funds set forth in subsection (a)(2) - (8) of this
46 section, the Commission may consider whether a workforce area:

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- (A) has met targeted expenditure levels as required by §800.74(a) of this subchapter, as applicable, for that period;
 - (B) has not expended or obligated more than 100 percent of the workforce area's allocation for the category of funding;
 - (C) has demonstrated that expenditures conform to cost category limits for funding;
 - (D) has demonstrated the need for and ability to use additional funds;
 - (E) has an established plan for working with at least one of the Governor's industry clusters, as specified in the local Board plan;
 - (F) is current on expenditure reporting;
 - (G) is current with all single audit requirements; and
 - (H) 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 workforce area securing local funds, the Commission may consider:
- (A) whether a workforce area has met the level for securing and completing local match requirements set out in §800.73(a) of this subchapter; and
 - (B) the applicable factors listed in paragraph (1) of this subsection, including factors in paragraph (1)(B) - (H) of this subsection.
- (c) The Commission may reallocate funds to an eligible workforce area based on the applicable method of allocation, as set forth in this subchapter, and may modify the amount to be reallocated by considering the following:
- (1) the amount specified in a workforce area's written request for additional funds;
 - (2) the amount available for reallocation versus the total dollar amount of requests;
 - (3) the demonstrated ability of a workforce area to effectively expend funds to address the need for services in the workforce area;
 - (4) the extent to which the project supports activities related to the Governor's industry clusters;

1 (5) the workforce area's performance during the current and prior program year;
2 and

3
4 (6) related factors, as necessary, to ensure that funds are fully used.

5
6 (d) To the extent this section is found not to comply with federal requirements, or should
7 any related federal waivers expire, the Commission will be subject to federal
8 requirements in effect, as applicable.
9

10 *The provisions of this §800.77 adopted to be effective September 14, 2009, 34 TexReg*
11 *6341; amended to be effective February 7, 2011, 36 TexReg 592*

12
13 [Return to Table of Contents](#)

14
15 **§800.78. Midyear Deobligation of AEL Funds.**

16
17 (a) The Commission may deobligate funds from an AEL grant recipient during the
18 program year if an AEL grant recipient is not meeting the expenditure thresholds set
19 forth in subsection (b) of this section, provided, however, that the requirements of
20 subsection (d) of this section are satisfied.

21
22 (1) AEL grant recipients that fail to meet the expenditure thresholds set forth in
23 subsection (b) of this section at the end of months four, five, six, or seven
24 (October, November, December, or January) will be reviewed to determine the
25 causes for the under expenditure of funds, except as set forth in subsection (e)
26 of this section.

27
28 (2) The Commission shall not deobligate more than the difference between an
29 AEL grant recipient's actual expenditures and the amount corresponding to the
30 relative proportion of the program year.

31
32 (3) The Commission shall not deobligate funds from an AEL grant recipient that
33 failed to meet the expenditure thresholds set forth in subsection (b) of this
34 section, if within 60 days prior to the potential deobligation period the
35 Commission executes a contract amendment for a supplemental allocation or
36 reallocation of funds in the same program funding category.

37
38 (b) The Commission may deobligate funds from an AEL grant recipient midyear, as set
39 forth in subsection (a) of this section, if an AEL grant recipient fails to achieve the
40 expenditure of an amount corresponding to 90 percent or more of the relative
41 proportion of the program year.

42
43 (c) An AEL grant recipient subject to deobligation for failure to meet the requirements
44 set forth in this section shall, upon request by the Commission, submit a written
45 justification. For an AEL consortium, a copy must be provided to all AEL
46 consortium members. The written justification shall provide sufficient detail

1 regarding the actions an AEL grant recipient will take to address its deficiencies,
2 including:

- 3
4 (1) expansion of services proportionate to the available resources;
5 projected service levels and related performance;
6
7 (2) reporting outstanding obligations; and
8
9 (3) any other factors an AEL grant recipient would like the Commission to
10 consider.

11
12 (d) Any amounts deobligated from an AEL grant recipient must be made available as a
13 first priority to any other AEL grant recipient(s) providing AEL services within the
14 same workforce area that meet the requirements of §800.80(a) of this subchapter,
15 upon receipt and approval by the Commission of an acceptable plan.

16
17 (e) To the extent this section may be found not to comply with federal requirements, or
18 should any related federal waivers expire, the Commission will be subject to federal
19 requirements in effect, as applicable.
20

21 *The provisions of this §800.78 adopted to be effective February 24, 2014, 39 TexReg 1195;*
22 *amended to be effective December 16, 2018, 43 TexReg 8148*

23
24 [Return to Table of Contents](#)

25
26 **§800.79. Voluntary Deobligation of AEL Funds.**

27
28 To request a voluntary deobligation of funds allocated to the workforce area, an AEL
29 grant recipient's chief executive officer shall submit a written request to the Commission.
30 For an AEL consortium, a copy must be provided to all AEL consortium members. Any
31 amounts voluntarily deobligated from an AEL grant recipient must be made available as
32 a first priority to any other AEL grant recipient(s) providing AEL services within the
33 same workforce area that meet the requirements of §800.80(a) of this subchapter, upon
34 receipt and approval by the Commission of an acceptable plan.
35

36 *The provisions of this §800.79 adopted to be effective February 24, 2014, 39 TexReg 1195*

37
38 [Return to Table of Contents](#)

39
40 **§800.80. Reallocation of AEL Funds.**

- 41
42 (a) For an AEL grant recipient to be eligible to receive deobligated AEL funds, the
43 Commission may consider whether the AEL grant recipient:
44
45 (1) has met targeted expenditure levels as required by §800.78(a) - (b) of this
46 subchapter, as applicable, for that period;

- 1
2 (2) has not expended or obligated more than 100 percent of the workforce area's
3 allocation for the category of funding;
4
5 (3) has demonstrated that expenditures conform to cost category limits for
6 funding;
7
8 (4) has demonstrated the need for and ability to use additional funds;
9
10 (5) is current on expenditure reporting;
11
12 (6) is current with all single audit requirements; and
13
14 (7) is not under sanction.
15

- 16 (b) Any amounts deobligated or voluntarily deobligated from an AEL grant recipient
17 shall be made available as a first priority to any other AEL grant recipients providing
18 AEL services within the same workforce area that meet the requirements of
19 subsection (a) of this section, upon receipt and approval by the Commission of an
20 acceptable plan. Following the determination that any such plan has not been
21 determined to be acceptable, the Commission may consider an AEL grant recipient
22 satisfying the requirements of subsection (a) of this section, upon receipt and
23 approval by the Commission of an acceptable plan.
24

25 *The provisions of this §800.80 adopted to be effective February 24, 2014, 39 TexReg 1195*
26

27 [Return to Table of Contents](#)
28

29 **SUBCHAPTER C. SAVINGS INCENTIVE PROGRAM FOR STATE AGENCIES**
30

31 **§800.100. Definitions.**
32

33 In addition to the definitions contained in §800.2 of this title, the following words and
34 terms, when used in this subchapter, shall have the following meanings, unless the
35 context clearly indicates otherwise:
36

- 37 (1) General appropriations act--a legislative act appropriating money for the
38 operation of state government.
39
40 (2) General obligation bond--a bond issued on behalf of the State of Texas, the
41 repayment of which is guaranteed by the full faith and credit of the State of
42 Texas and which has been authorized by the Texas Constitution. For purposes
43 of this subchapter, the term does not include an unemployment insurance trust
44 fund bond.
45

- 1 (3) General revenue-dedicated--a subset of general revenue that is dedicated as a
2 result of legislative action and may be appropriated only for the purpose to
3 which the revenue is statutorily dedicated.
4
5 (4) Undedicated general revenue--general revenue that does not fall under the
6 definition of "general revenue-dedicated" and can be transferred for another
7 use through a special provision to the general appropriations act.
8
9 (5) Upper management--includes commissioners, executive director, deputy
10 executive director, division directors, and deputy division directors.
11

12 *The provisions of this §800.100 adopted to be effective February 25, 2019, 44 TexReg 871*

13
14 [Return to Table of Contents](#)

15
16 **§800.101. Procedure.**

- 17
18 (a) In any fiscal year, if the agency spends less of the undedicated general revenue
19 derived from nonfederal sources than is appropriated to it by the general
20 appropriations act, the agency shall notify the comptroller of the savings before
21 October 30 following the end of the fiscal year in which the savings are realized.
22
23 (b) Upon verification of savings by the comptroller, the agency may retain one-half of
24 the verified amount of savings.
25
26 (c) The verified amount of savings may be spent only on an activity or expense that does
27 not:
28
29 (1) create new or expanded services; or
30
31 (2) require ongoing funding at a later date.
32
33 (d) Of the verified savings retained by the agency, one-half:
34
35 (1) shall be used to make additional principal payments for general obligation
36 bonds issued by the agency or on behalf of the agency by the Texas Public
37 Finance Authority; or
38
39 (2) may be used to provide bonuses to a qualifying employee or employees of the
40 agency, as set forth in Texas Government Code §2108.103(c)(2)(A) - (C), if
41 there are no outstanding general obligation bonds issued by the agency or on
42 behalf of the agency by the Texas Public Finance Authority.
43
44 (e) In determining whether savings have been realized, the Agency's Finance department
45 will consider the difference between lapsed funds and verifiable savings that are

1 based on proactive efforts by an Agency employee or employees to reduce
2 operational and other costs to the Agency.

- 3
4
- 5 (f) If verified savings under this section are not needed for other Agency priorities, the
6 savings may be awarded as bonuses as set out in Texas Government Code
7 §2108.103(c)(2).
8
 - 9 (g) The Agency's Finance department will notify the Agency's executive director of the
10 savings that may be distributed to provide bonuses.
11
 - 12 (h) The Agency's executive director may implement bonuses in accordance with the
13 tiered bonus structure, as set forth in Texas Government Code §2108.103(d)(1) - (4).
14 Before awarding the bonuses, the executive director will:
15
 - 16 (1) ensure that all financial obligations are met under Texas Government Code
17 §2108.103(c)(2); and
18
 - 19 (2) verify that each employee who receives a bonus:
20
 - 21 (A) is a current full-time equivalent employee of the Commission;
 - 22
 - 23 (B) worked for the Commission as a full-time equivalent employee for the
24 entire fiscal year in which the savings were realized; and
25
 - 26 (C) is directly responsible for or worked in a department, office, or other
27 division within the Commission that is responsible for the savings
28 realized.
29
 - 30 (i) Employees of the Agency who serve in an upper management position are prohibited
31 from receiving a bonus under this section.
32

33 *The provisions of this §800.101 adopted to be effective February 25, 2019, 44 TexReg 871*

34
35 [Return to Table of Contents](#)

36 37 **SUBCHAPTER F. INTERAGENCY MATTERS**

38 39 **§800.201. Title and Purpose.**

- 40
- 41 (a) These rules may be cited as Interagency Matters.
42
 - 43 (b) The purpose of these rules is to implement and interpret the provisions of the Texas
44 Administrative Code, Chapter 40, Interagency Matters, and to provide notice to the
45 public of the contents of the Memorandums of Understanding.

1
2 *The provisions of this §800.201 adopted to be effective March 19, 1998, 23 TexReg 2829*

3
4 [Return to Table of Contents](#)

5
6 **§800.202. Memorandum of Understanding with Texas Commission for the Deaf and**
7 **Hard of Hearing.**

8
9 The Texas Workforce Commission hereby adopts by reference the terms of a
10 memorandum of understanding entered into with the Texas Commission for the Deaf set
11 out in §181.912(a) and (b) and §181.915 of this title (relating to the Texas Department of
12 Correction and the Texas Workforce Commission). Copies of the memorandum of
13 understanding are available at the Texas Workforce Commission, 101 East 15th Street,
14 Room 614, Austin, Texas 78778.

15
16 *The provisions of this §800.202 adopted to be effective March 19, 1998, 23 TexReg 2829*

17
18 [Return to Table of Contents](#)

19
20 **§800.203. Memorandum of Understanding with Texas Education Agency.**

21
22 The Texas Workforce Commission hereby adopts by reference the terms of a
23 memorandum of understanding on transition planning for students enrolled in special
24 education. Said memorandum of understanding is set out at 19 TAC §89.1110. Copies
25 are available at the Texas Workforce Commission, 101 East 15th, Room 614, Austin,
26 Texas 78778.

27
28 *The provisions of this §800.203 adopted to be effective March 19, 1998, 23 TexReg 2829*

29
30 [Return to Table of Contents](#)

31
32 **§800.204. Memorandum of Understanding with Texas Department of Economic**
33 **Development.**

34
35 The Texas Workforce Commission hereby adopts by reference the terms of a
36 memorandum of understanding on program planning and budgeting relating to workforce
37 development programs. Said memorandum of understanding is set out at 10 TAC
38 §195.10. Copies are available at the Texas Workforce Commission, 101 East 15th, Room
39 614, Austin, Texas 78778.

1
2 *The provisions of this §800.204 adopted to be effective March 19, 1998, 23 TexReg 2829*
3

4 [Return to Table of Contents](#)
5

6 **§800.205. Memoranda of Understanding with a Governmental Entity Pursuant to**
7 **Texas Government Code §497.0596(a)(4).**
8

- 9 (a) The Texas Workforce Commission hereby adopts by reference the terms of any
10 memorandum of understanding relating to identifying potentially affected employers
11 under a proposed private sector prison industries program and providing such
12 information to the appropriate governmental entity to meet its notification
13 requirements. Information provided to a governmental entity shall comply with the
14 requirements of Texas Labor Code §301.085 and 40 TAC, Chapter 815, Subchapter
15 E, of this title.
16
17 (b) Any memorandum of understanding under subsection (a) of this section shall
18 stipulate that:
19
20 (1) only publicly available data sources shall be used;
21
22 (2) costs incurred for producing the data shall be reimbursed to the Agency; and
23
24 (3) the information provided by the Agency is solely for the limited purpose of
25 allowing the governmental entity to meet its notice requirements under Texas
26 Government Code §497.0596 and is separate and apart from any certification
27 described in Texas Government Code §497.059.
28
29 (c) Copies of the memoranda of understanding are available at the Texas Workforce
30 Commission, 101 East 15th, Room 614, Austin, Texas 78778.
31

32 *The provisions of this §800.205 adopted to be effective July 12, 2010, 35 TexReg 6093*
33

34 [Return to Table of Contents](#)
35

36 **§800.206. Interagency Contract with the Texas Education Agency.**
37

38 The Texas Workforce Commission adopts by reference the terms of an interagency
39 contract entered into with the Texas Education Agency, as required by Texas Education
40 Code, §48.302, relating to the transfer of funds to implement a high school equivalency
41 subsidy program set out in Chapter 805, Subchapter E, §§805.71 - 805.73 of this title
42 (relating to High School Equivalency Subsidy Program).
43

1 *The provisions of this §800.206 adopted to be effective December 21, 2020, 45 TexReg 9243*

2
3 [Return to Table of Contents](#)

4
5 **SUBCHAPTER G. PETITION FOR ADOPTION OF RULES**

6
7 **§800.251. Title and Purpose.**

- 8
9 (a) Title. These rules may be cited as the Petition for the Adoption of Rules.
- 10
11 (b) Purpose. The purpose of these rules is to implement the provisions of Texas
12 Government Code, §2001.21 regarding agency procedure for addressing petitions for
13 the adoption of rules.

14
15 *The provisions of this §800.251 adopted to be effective April 19, 1998, 23 TexReg 3700*

16
17 [Return to Table of Contents](#)

18
19 **§800.252. Definitions.**

20
21 The following words and terms, when used in this subchapter, shall have the following
22 meanings, unless the context clearly indicates otherwise:

- 23
24 (1) Commission--The Texas Workforce Commission
- 25
26 (2) Interested person--An interested person is defined as:
- 27
28 (A) a resident of this state;
- 29
30 (B) a business entity located in this state;
- 31
32 (C) a governmental subdivision located in this state; or
- 33
34 (D) a public or private organization located in this state that is not a state
35 agency.

36
37 *The provisions of this §800.252 adopted to be effective April 19, 1998, 23 TexReg 3700;*
38 *amended to be effective March 14, 2016, 41 TexReg 1974*

39
40 [Return to Table of Contents](#)

41
42 **§800.253. Submission and Petition Requirements.**

43
44 Any interested person may petition the Texas Workforce Commission (Commission)
45 requesting the adoption of a rule. Petitioners should submit petitions in writing to the

1 General Counsel of the Commission. The petition may be in any legible form but must
2 contain at least the following information.

- 3
- 4 (1) Petitioner's Name and Address. The petitioners' name, complete mailing
5 address, and signature should appear in the request.
6
- 7 (2) Explanation and Justification. A petitioner should include an explanation and
8 justification of the proposed rule. The explanation should include a concise
9 statement of the relevant background information necessary to understand the
10 need for the rule, the existing problem that the proposed rule is to correct, and
11 the foreseeable effects of the requested rule.
12
- 13 (3) Text. A petitioner should include the text of the proposed rule reflecting added
14 or deleted words. A reference to any existing rule including the title, chapter
15 and section number, if applicable, should appear on the request.
16
- 17 (4) Authority. A statement of the statutory or other authority for taking the
18 requested action should also appear on the request.
19

20 *The provisions of this §800.253 adopted to be effective April 19, 1998, 23 TexReg 3700*

21
22 [Return to Table of Contents](#)

23
24 **§800.254. Review of Petition.**

25
26 Upon receipt of a substantially complete petition, the general counsel will forward a copy
27 of the petition to the appropriate division director for a response.
28

- 29 (1) Division Response. Within 20 days after receiving the petition from the
30 general counsel, the division director shall respond in writing to the General
31 Counsel recommending either denying the request or initiating the rulemaking
32 process. The division director's response shall contain the reasons for the
33 recommendation.
34
- 35 (2) General Counsel Recommendation. Within 20 days after receiving the
36 division director's response, the general counsel shall submit to the
37 commissioners the petition, the division director's response and a written
38 recommendation by the general counsel specifying the reasons for the
39 recommendation.
40

41 *The provisions of this §800.254 adopted to be effective April 19, 1998, 23 TexReg 3700*

42
43 [Return to Table of Contents](#)

44
45 **§800.255. Commission Decision and Action.**

- 1 (a) The Commissioners shall issue the final decision regarding the petition within 60
2 days after receipt of the petition from the petitioner to either:
3
4 (1) deny the petition in writing, stating the reasons for the denial; or
5
6 (2) initiate rulemaking proceedings in accordance with Texas Government Code,
7 Chapter 2001, Administrative Procedure, Subchapter B, Rulemaking, as it may
8 be amended.
9
- 10 (b) The Commission may modify any proposed rule to ensure that it conforms to the
11 format of commission rules, adequately addresses the perceived problem, and
12 conforms to the filing requirements of the *Texas Register*.
13

14 *The provisions of this §800.255 adopted to be effective April 19, 1998, 23 TexReg 3700*

15
16 [Return to Table of Contents](#)

17
18 **SUBCHAPTER H. VENDOR PROTESTS**

19
20 **§800.300. Definitions.**

21
22 The following words and terms, when used in this subchapter, shall have the following
23 meanings, unless the context clearly indicates otherwise:
24

- 25 (1) Interested Parties--Respondents in connection with the Solicitation, evaluation,
26 or award that is being protested.
27
- 28 (2) Protestant--A Respondent Vendor that submits a protest under the Agency
29 Vendor Protest Procedures.
30
- 31 (3) Respondent--A Vendor that submits an offer or proposal in response to an
32 Agency Solicitation.
33
- 34 (4) Solicitation--A document, such as an Invitation for Bids, Request for Offers,
35 Request for Proposals, or Request for Qualifications that contains a request for
36 responses from Vendors to provide specified goods and services. The term also
37 refers to the process of obtaining responses from Vendors to provide specified
38 goods and services.
39
- 40 (5) Vendor--A potential provider of goods or services to the Agency.
41

42 *The provisions of this §800.300 adopted to be effective October 26, 2020, 45 TexReg 7608*

43
44 [Return to Table of Contents](#)

45
46 **§800.301. Vendor Protest Procedures.**

- 1
2 (a) Any Respondent who is allegedly aggrieved in connection with the Solicitation,
3 evaluation, or award of a contract by the Agency may formally protest to the
4 Agency's director of business operations.
5
6 (1) Such protests must be made in writing and timely received by the Agency's
7 director of business operations.
8
9 (2) The protest must be received by the Agency's director of business operations
10 within 10 working days after the Protestant knows, or should have known, of
11 the occurrence of the action that is protested.
12
13 (3) The Protestant shall mail or deliver copies of the protest to: Director of
14 Business Operations, 101 E. 15th Street, Room 316T, Austin, Texas 78778.
15 The Protestant must also mail or deliver copies of the protest to Interested
16 Parties known to the Protestant.
17
18 (b) A protest that is not filed timely shall not be considered unless the director of
19 business operations determines that the protest raises issues that are significant to the
20 Agency's procurement practices or procedures.
21
22 (c) The protest must be in writing and contain:
23
24 (1) the identifying name and number of the Solicitation being protested;
25
26 (2) identification of the specific statute or regulation that the Protestant alleges has
27 been violated;
28
29 (3) a specific description of each act or omission alleged to have violated the
30 statutory or regulatory provision identified above in paragraph (2) of this
31 section;
32
33 (4) a precise statement of the relevant facts including:
34
35 (A) sufficient documentation to establish that the protest has been timely
36 filed; and
37
38 (B) a description of the resulting adverse impact to the Protestant;
39
40 (5) a statement of the argument and authorities that the Protestant offers in support
41 of the protest;
42
43 (6) an explanation of the action the Protestant is requesting from the Agency; and
44
45 (7) a statement confirming that copies of the protest have been mailed or delivered
46 to any other Interested Party known to the Protestant.

- 1
2 (d) The protest must be signed by an authorized representative for the Protestant and the
3 signature notarized.
4
5 (e) The Protestant may appeal determination of a protest to the Agency's deputy
6 executive director.
7
8 (1) The appeal filed under these procedures must be in writing, addressed to the
9 Agency's deputy executive director; and
10
11 (2) The protest must be received by the deputy executive director no later than 10
12 business days after the date of receipt of the written determination issued by
13 the director of business operations.
14
15 (f) The Agency may move forward with a Solicitation or contract award without delay,
16 in spite of a timely filed protest, to protect the best interests of the Agency or the
17 state.
18

19 *The provisions of this §800.301 adopted to be effective October 26, 2020, 45 TexReg 7608*
20

21 [Return to Table of Contents](#)
22

23 **SUBCHAPTER I. ENHANCED CONTRACT MONITORING** 24

25 **§800.350. Purpose and Scope.** 26

- 27 (a) Purpose. The purpose of this subchapter is to implement the requirements of Texas
28 Government Code, §2261.253(c), requiring state agencies to establish, by rule, a
29 procedure to identify each contract that requires enhanced contract or performance
30 monitoring.
31
32 (b) Scope. Pursuant to Texas Government Code, §2261.253(d) and (g), this subchapter
33 does not apply to:
34
35 (1) memoranda of understanding;
36
37 (2) interagency contracts;
38
39 (3) interlocal agreements; or
40
41 (4) contracts for which there is not a cost.
42

43 *The provisions of this §800.350 adopted to be effective October 26, 2020, 45 TexReg 7608*
44

45 [Return to Table of Contents](#)
46

1 **§800.351. Enhanced Contract Monitoring Policy.**

- 2
- 3 (a) The Agency shall identify which contracts for goods and services require enhanced
- 4 monitoring by evaluating the risk factors, which include:
- 5
- 6 (1) the complexity of the goods and services to be provided;
- 7
- 8 (2) the contract amount;
- 9
- 10 (3) the length and scope of the project supported by the contract;
- 11
- 12 (4) whether the services are new or have changed significantly since the last
- 13 procurement of the same services;
- 14
- 15 (5) whether the Agency has experience with the contractor;
- 16
- 17 (6) whether the project affects external stakeholders or is of particular interest to
- 18 third parties;
- 19
- 20 (7) whether Agency data is accessed by the contractor; and
- 21
- 22 (8) any other factors the Agency determines in a particular circumstance will
- 23 create a level of risk to the state or Agency such that enhanced monitoring is
- 24 required.
- 25
- 26 (b) For contracts requiring enhanced monitoring, the contractor shall report to the
- 27 assigned Agency contract manager on progress toward goals or performance
- 28 measure achievements, and the status of deliverables, if any, and on any issues of
- 29 which the contractor is aware that may create an impediment to meeting the project
- 30 timeline or goals.
- 31
- 32 (c) Enhanced monitoring may also include site visits, additional meetings with
- 33 contractor staff, and inspection of documentation required by the Agency to assess
- 34 progress toward achievement of performance requirements.
- 35
- 36 (d) Projects deemed medium or high risk shall be monitored by the assigned contract
- 37 manager and may involve additional team members such as an assigned project
- 38 manager and staff from the Office of General Counsel or the Finance, Information
- 39 Technology, or Regulatory Integrity Divisions, if warranted.
- 40

41 *The provisions of this §800.351 adopted to be effective October 26, 2020, 45 TexReg 7608*

42

43 [Return to Table of Contents](#)

44

45 **§800.352. Reporting of Enhanced Contract Monitoring.**

46

- 1 (a) Pursuant to the Texas Government Code §2261.253, the Agency shall submit
2 information on each contract identified for enhanced contract monitoring to the
3 Commission.
4
- 5 (b) The director of Procurement and Contract Services (PCS director) shall immediately
6 notify the Commission of any serious issue or risk that is identified with respect to a
7 contract identified for enhanced contract monitoring.
8
- 9 (c) The contract manager shall report on the status of all contracts subject to enhanced
10 monitoring to the PCS director quarterly.
11
- 12 (d) If any serious issues or risks are identified about a contract subject to enhanced
13 monitoring, the PCS director will immediately notify the director of business
14 operations and the executive director.
15

16 *The provisions of this §800.352 adopted to be effective October 26, 2020, 45 TexReg 7608*
17

18 [Return to Table of Contents](#)
19

20 **SUBCHAPTER K. CONTRACT NEGOTIATION, MEDIATION, AND OTHER ASSISTED**
21 **NEGOTIATION OR MEDIATION PROCESSES.**
22

23 **§800.451. Purpose and Applicability.**
24

- 25 (a) Purpose. The Commission intends these rules to govern negotiation, mediation, and
26 other assisted negotiation or mediation processes regarding a claim of breach of
27 contract asserted by a contractor against the Agency under Texas Government Code,
28 Chapter 2260. The Commission recognizes that the rules contained in this
29 subchapter are not intended to replace procedures relating to breach of contract
30 claims that are mandated by state or federal law. The parties to a contract are
31 encouraged to resolve any disagreement concerning the contract in the ordinary
32 course of contract administration under less formal procedures specified in the
33 parties' contract.
34
- 35 (b) Applicability.
36
- 37 (1) This chapter does not apply to an action of the Agency for which a contractor
38 is entitled to a specific remedy pursuant to state or federal constitution or
39 statute.
40
- 41 (2) This chapter does not apply to a contract action proposed or taken by the
42 Agency for which a contractor receiving Medicaid funds under that contract is
43 entitled by state statute or rule to a hearing conducted in accordance with
44 Texas Government Code, Chapter 2001.
45
- 46 (3) This chapter does not apply to contracts:

- 1
2 (A) between the Agency and the federal government or its agencies, another
3 state or nation;
4
5 (B) between the Agency and one or more other units of state government;
6
7 (C) between the Agency and a local governmental body, or a political
8 subdivision of another state;
9
10 (D) between a subcontractor and a contractor;
11
12 (E) subject to §201.112 of the Transportation Code;
13
14 (F) within the exclusive jurisdiction of state or local regulatory bodies; or
15
16 (G) within the exclusive jurisdiction of federal courts or regulatory bodies.

- 17
18 (c) Remedies. The procedures contained in this subchapter are exclusive and required
19 prerequisites to suit under the Civil Practice and Remedies Code, Chapter 107, and
20 the Texas Government Code, Chapter 2260. This subchapter does not waive the
21 Commission's or Agency's sovereign immunity to suit or liability.
22

23 *The provisions of this §800.451 adopted to be effective August 23, 2000, 25 TexReg 8063;*
24 *amended to be effective February 7, 2011, 36 TexReg 592*

25
26 [Return to Table of Contents](#)

27
28 **§800.452. Definitions.**

29
30 The following words and terms, when used in this chapter, shall have the following
31 meaning, unless the context clearly indicates otherwise:

- 32
33 (1) Claim--A demand for damages by the contractor based upon the Agency's
34 alleged breach of the contract.
35
36 (2) Contract--A written contract between the Agency and a contractor by the terms
37 of which the contractor agrees either:
38
39 (A) to provide goods or services, by sale or lease, to or for the Agency; or
40
41 (B) to perform a project as defined by Texas Government Code, §2166.001.
42
43 (3) Contractor--Independent contractor who has entered into a contract directly
44 with the Agency. The term does not include:
45

- 1 (A) The contractor's subcontractor, officer, employee, agent or other person
2 furnishing goods or services to a contractor;
3
4 (B) An employee of the Agency; or
5
6 (C) A student at an institution of higher education.
7
8 (4) Counterclaim--A demand by the Agency based upon the contractor's claim.
9
10 (5) Event--An act or omission or a series of acts or omissions giving rise to a
11 claim, including but not limited to the following:
12
13 (A) for goods or services:
14
15 (i) the failure of the Agency to timely pay for goods and services;
16
17 (ii) the failure to pay the balance due and owing on the contract price,
18 including orders for additional work, after deducting any amount
19 owed the Agency for work not performed under the contract or in
20 substantial compliance with the contract terms;
21
22 (iii) the suspension, cancellation, or termination of the contract;
23
24 (iv) final rejection of the goods or services tendered by the contractor, in
25 whole or in part;
26
27 (v) repudiation of the entire contract prior to or at the outset of
28 performance by the contractor; or
29
30 (vi) withholding liquidated damages from final payment to the
31 contractor.
32
33 (B) for a project:
34
35 (i) the failure to timely pay the unpaid balance of the contract price
36 following final acceptance of the project;
37
38 (ii) the failure to make timely progress payments required by the
39 contract;
40
41 (iii) the failure to pay the balance due and owing on the contract price,
42 including orders for additional work, after deducting any amount
43 owed the Agency for work not performed under the contract or in
44 substantial compliance with the contract terms;
45

- 1 (iv) the failure to grant time extensions to which the contractor is
- 2 entitled under the terms of the contract;
- 3
- 4 (v) the failure to compensate the contractor for occurrences for which
- 5 the contract provides a remedy;
- 6
- 7 (vi) suspension, cancellation or termination of the contract;
- 8
- 9 (vii) rejection by the Agency, in whole or in part, of the "work," as
- 10 defined by the contract, tendered by the contractor;
- 11
- 12 (viii) repudiation of the entire contract prior to or at the outset of
- 13 performance by the contractor;
- 14
- 15 (ix) withholding liquidated damages from final payment to the
- 16 contractor; or
- 17
- 18 (x) refusal, in whole or in part, of a written request made by the
- 19 contractor in strict accordance with the contract to adjust the
- 20 contract price, the contract time, or the scope of work.
- 21
- 22 (6) Goods--Supplies, materials or equipment.
- 23
- 24 (7) Mediation--A consensual process in which an impartial third party, the
- 25 mediator, facilitates communication between the parties to promote
- 26 reconciliation, settlement, or understanding among them.
- 27
- 28 (8) Negotiation--A consensual bargaining process in which the parties
- 29 attempt to resolve a claim and counterclaim.
- 30
- 31 (9) Parties--The contractor and the Agency that have entered into a contract
- 32 in connection with which a claim of breach of contract has been filed
- 33 under this chapter.
- 34
- 35 (10) Project--As defined in Texas Government Code §2166.001, a building
- 36 construction project that is financed wholly or partly by a specific
- 37 appropriation, bond issue or federal money, including the construction
- 38 of:
- 39
- 40 (A) a building, structure, or appurtenant facility or utility, including the
- 41 acquisition and installation of original equipment and original furnishing;
- 42 and
- 43
- 44 (B) an addition to, or alteration, modification, rehabilitation, or repair of an
- 45 existing building, structure, or appurtenant facility or utility.

- 1
2 (11) Services--The furnishing of skilled or unskilled labor or consulting or
3 professional work, or a combination thereof, excluding the labor of an
4 employee of the Agency.
5

6 *The provisions of this §800.452 adopted to be effective August 23, 2000, 25 TexReg 8063*
7

8 [Return to Table of Contents](#)
9

10 **§800.453. Contractor Claim.**

- 11
12 (a) A contractor asserting a claim of breach of contract under the Texas Government
13 Code, Chapter 2260, shall file notice of the claim as provided by this section that
14 shall:
15

- 16 (1) be in writing and signed by the contractor or the contractor's authorized
17 representative;
18
19 (2) be delivered by hand, certified mail return receipt requested, or other verifiable
20 delivery service to the officer of the Agency designated in the contract to
21 receive a notice of claim of breach of contract under the Texas Government
22 Code, Chapter 2260; if no person is designated in the contract, the notice shall
23 be delivered to the executive director; and
24
25 (3) state in detail:
26
27 (A) the nature of the alleged breach of contract, including the date of the
28 event that the contractor asserts as the basis of the claim and each
29 contractual provision allegedly breached;
30
31 (B) a description of damages that resulted from the alleged breach, including
32 the amount and method used to calculate those damages; and
33
34 (C) the legal theory of recovery, i.e., breach of contract, including the causal
35 relationship between the alleged breach and the damages claimed.
36

- 37 (b) In addition to the mandatory contents of the notice of claim as required by
38 subsection (a) of this section, the contractor may submit supporting documentation
39 or other tangible evidence to facilitate the Agency's evaluation of the contractor's
40 claim.
41

- 42 (c) The notice of claim shall be delivered no later than 180 days after the date of the
43 event that the contractor asserts as the basis of the claim.
44

45 *The provisions of this §800.453 adopted to be effective August 23, 2000, 25 TexReg 8063*

1
2 [Return to Table of Contents](#)
3

4 **§800.454. Agency Counterclaim.**
5

- 6 (a) The Agency, when asserting a counterclaim under Texas Government Code, Chapter
7 2260, shall file notice of the counterclaim as provided by this section that shall:
8
9 (1) be in writing;
10
11 (2) be delivered by hand, certified mail return receipt requested, or other verifiable
12 delivery service to the contractor or representative of the contractor who signed
13 the notice of claim of breach of contract; and
14
15 (3) state in detail:
16
17 (A) the nature of the counterclaim;
18
19 (B) a description of damages or offsets sought, including the amount and
20 method used to calculate those damages or offsets; and
21
22 (C) the legal theory supporting the counterclaim.
23
24 (b) In addition to the mandatory contents of the notice of counterclaim required by
25 subsection (a) of this section, the Agency may submit supporting documentation or
26 other tangible evidence to facilitate the contractor's evaluation of the unit's
27 counterclaim.
28
29 (c) The notice of counterclaim shall be delivered to the contractor no later than 60 days
30 after the Agency's receipt of the contractor's notice of claim.
31
32 (d) Nothing herein precludes the Agency from initiating a lawsuit for damages against
33 the contractor in a court of competent jurisdiction.
34

35 *The provisions of this §800.454 adopted to be effective August 23, 2000, 25 TexReg 8063;*
36 *amended to be effective February 7, 2011, 36 TexReg 592*
37

38 [Return to Table of Contents](#)
39

40 **§800.455. Request for Voluntary Disclosure of Additional Information.**
41

- 42 (a) Upon the filing of a claim or counterclaim, parties may request to review and copy
43 information in the possession or custody or subject to the control of the other party
44 that pertains to the contract claimed to have been breached, including, without
45 limitation:
46

- 1 (1) accounting records;
2
3 (2) correspondence, including, without limitation, correspondence between the
4 Agency and outside consultants it utilized in preparing its bid solicitation or
5 any part thereof or in administering the contract, and correspondence between
6 the contractor and its subcontractors, materialmen, and vendors;
7
8 (3) schedules;
9
10 (4) the parties' internal memoranda; and
11
12 (5) documents created by the contractor in preparing its offer to the Agency and
13 documents created by the Agency in analyzing the offers it received in
14 response to a solicitation.
15
16 (b) Subsection (a) of this section applies to all information in the parties' possession
17 regardless of the manner in which it is recorded, including, without limitation, paper
18 and electronic media.
19
20 (c) The contractor and the Agency may seek additional information directly from third
21 parties, including, without limitation, the Agency's third-party consultants and the
22 contractor's subcontractors.
23
24 (d) Nothing in this section requires any party to disclose the requested information or
25 any matter that is privileged under Texas law.
26
27 (e) Material submitted pursuant to this subsection and claimed to be confidential by the
28 contractor shall be handled pursuant to the requirements of the Public Information
29 Act.
30

31 *The provisions of this §800.455 adopted to be effective August 23, 2000, 25 TexReg 8063*
32

33 [Return to Table of Contents](#)
34

35 **§800.456. Costs.**
36

37 Unless the contractor and the Agency agree otherwise, each party shall be responsible for
38 its own costs incurred in connection with the negotiation, mediation, and other assisted
39 negotiation or mediation processes, including costs of document reproduction for
40 documents requested by such party, attorney's fees, and consultant or expert fees. The
41 costs of the mediation process itself shall be divided equally between the parties.
42

43 *The provisions of this §800.456 adopted to be effective August 23, 2000, 25 TexReg 8063*
44

45 [Return to Table of Contents](#)
46

1 **§800.461. Duty to Negotiate.**

2
3 The parties shall negotiate in accordance with the timetable set forth in §800.462 of this
4 subchapter to attempt to resolve all claims and counterclaims. No party is obligated to
5 settle with the other party as a result of the negotiation.
6

7 *The provisions of this §800.461 adopted to be effective August 23, 2000, 25 TexReg 8063*

8
9 [Return to Table of Contents](#)

10
11 **§800.462. Negotiation Timetable.**

- 12
- 13 (a) Following receipt of a contractor's notice of claim, the Agency's executive director
14 or designated representative shall review the contractor's claim and the Agency's
15 counterclaim, if any, and initiate negotiations with the contractor to attempt to
16 resolve the claim and counterclaim.
17
 - 18 (b) Subject to subsection (c) of this section, the parties shall begin negotiations within a
19 reasonable period of time, not to exceed the 120th day after the date the claim is
20 received.
21
 - 22 (c) The Agency may delay negotiations, with written agreement of the parties, until after
23 the 120th day after the date of the event giving rise to the claim of breach of contract.
24
 - 25 (d) The parties may conduct negotiations according to an agreed schedule as long as
26 they begin negotiations no later than the 120th day after the claim is received.
27
 - 28 (e) Subject to subsection (f) of this section, the parties shall complete the negotiations
29 that are required by this subchapter as a prerequisite to a contractor's request for
30 contested case hearing no later than 270 days after the Agency receives the
31 contractor's notice of claim.
32
 - 33 (f) The parties may agree in writing to extend the time for negotiations on or before the
34 270th day after the Agency receives the contractor's notice of claim. The agreement
35 shall be signed by representatives of the parties with authority to bind each
36 respective party and shall provide for the extension of the statutory negotiation
37 period until a date certain. The parties may enter into a series of written extension
38 agreements that comply with the requirements of this section.
39
 - 40 (g) The contractor may request a contested case hearing before the State Office of
41 Administrative Hearings (SOAH) pursuant to §800.492 of this subchapter (relating
42 to Request for Contested Case Hearing) after the 270th day after the Agency receives
43 the contractor's notice of claim, or the expiration of any extension agreed to under
44 subsection (f) of this section.
45

1 (h) The parties may agree to mediate the dispute at any time before the 270th day after
2 the Agency receives the contractor's notice of claim or before the expiration of any
3 extension agreed to by the parties pursuant to subsection (f) of this section. The
4 mediation shall be governed by §§800.471 - 800.473 of this subchapter.
5

6 (i) Nothing in this section is intended to prevent the parties from agreeing to commence
7 negotiations earlier than the deadlines established in subsections (b) and (c) of this
8 section, or from continuing or resuming negotiations after the contractor requests a
9 contested case hearing before SOAH.
10

11 *The provisions of this §800.462 adopted to be effective August 23, 2000, 25 TexReg 8063;*
12 *amended to be effective February 7, 2011, 36 TexReg 592*
13

14 [Return to Table of Contents](#)
15

16 **§800.463. Conduct of Negotiation.**
17

18 (a) A negotiation under this subchapter may be conducted by any method, technique, or
19 procedure authorized under the contract or agreed upon by the parties, including,
20 without limitation, negotiation in person, by telephone, correspondence, video
21 conference, or any other method that permits the parties to identify their respective
22 positions, discuss their respective differences, confer with their respective advisers,
23 exchange offers of settlement, and settle.
24

25 (b) The parties may conduct negotiations with the assistance of one or more neutral third
26 parties. If the parties choose to mediate their dispute, the mediation shall be
27 conducted in accordance with §§800.471 - 800.473 of this subchapter. Parties may
28 choose other assisted negotiation or mediation processes, including, without
29 limitation, processes such as those described in §§800.481 and 800.482 of this
30 subchapter.
31

32 (c) To facilitate the meaningful evaluation and negotiation of the claim(s) and any
33 counterclaim(s), the parties may exchange relevant documents that support their
34 respective claims, defenses, counterclaims or positions.
35

36 (d) Material submitted pursuant to this subsection and claimed to be confidential by the
37 contractor shall be handled pursuant to the requirements of the Public Information
38 Act.
39

40 *The provisions of this §800.463 adopted to be effective August 23, 2000, 25 TexReg 8063*
41

42 [Return to Table of Contents](#)
43

1 **§800.471. Mediation.**
2

- 3 (a) Option to Mediate. The parties may agree to mediate the dispute at any time before
4 the 120th day after the Agency receives the contractor's notice of claim or before the
5 expiration of any extension agreed to by the parties pursuant to §800.462(f) of this
6 subchapter. The mediation shall be governed by rules contained in this subchapter.
7
- 8 (b) Timetable. A contractor and Agency may mediate the dispute even after the case has
9 been referred to SOAH for a contested case. SOAH may also refer a contested case
10 for mediation pursuant to its own rules and guidelines, whether or not the parties
11 have previously attempted mediation.
12
- 13 (c) Request for Referral. If mediation does not resolve all issues raised by the claim, the
14 contractor may request that the claim be referred to SOAH by the Agency. Nothing
15 in these rules prohibits the contractor and the Agency from mediating their dispute
16 after the case has been referred for contested case hearing, subject to the rules of
17 SOAH.
18
- 19 (d) Conduct of Mediation.
20
- 21 (1) A mediator may not impose his or her own judgment on the issues for that of
22 the parties. The mediator must be acceptable to both parties.
23
- 24 (2) The mediation is subject to the provisions of the Governmental Dispute
25 Resolution Act, Texas Government Code, Chapter 2009. For purposes of this
26 subchapter, "mediation" is assigned the meaning set forth in the Civil Practice
27 and Remedies Code, §154.023.
28
- 29 (3) To facilitate a meaningful opportunity for settlement, the parties shall, to the
30 extent possible, select representatives who are knowledgeable about the
31 dispute, who are in a position to reach agreement, or who can credibly
32 recommend approval of an agreement.
33

34 *The provisions of this §800.471 adopted to be effective August 23, 2000, 25 TexReg 8063;*
35 *amended to be effective February 7, 2011, 36 TexReg 592*
36

37 [Return to Table of Contents](#)
38

39 **§800.472. Agreement to Mediate.**
40

- 41 (a) Parties may agree to use mediation as an option to resolve a breach of contract claim
42 at the time they enter into the contract and include a contractual provision to do so.
43 The parties may mediate a breach of contract claim even absent a contractual
44 provision to do so if both parties agree.
45
- 46 (b) Any agreement to mediate shall include consideration of the following factors:

- 1
2 (1) The source of the mediator. Potential sources of mediators include
3 governmental officers or employees who are qualified as mediators under Civil
4 Practice and Remedies Code, §154.052, private mediators, SOAH, the Center
5 for Public Policy Dispute Resolution at The University of Texas at Austin
6 School of Law, an alternative dispute resolution system created under Civil
7 Practice and Remedies Code, Chapter 152, or another state or federal agency
8 or through a pooling agreement with several state agencies. Before naming a
9 mediator source in a contract, the parties should contact the mediator source to
10 be sure that it is willing to serve in that capacity. In selecting a mediator, the
11 parties should use the qualifications set forth in §800.473 of this Subchapter
12 (relating to Qualifications and Immunity of the Mediator).
13
14 (2) The time period for the mediation. The parties should allow enough time in
15 which to make arrangements with the mediator and attending parties to
16 schedule the mediation, to attend and participate in the mediation, and to
17 complete any settlement approval procedures necessary to achieve final
18 settlement. While this time frame can vary according to the needs and
19 schedules of the mediator and parties, it is important that the parties allow
20 adequate time for the process.
21
22 (3) The location of the mediation.
23
24 (4) Allocation of costs of the mediator.
25
26 (5) The identification of representatives who will attend the mediation on behalf of
27 the parties, if possible, by name or position within the Agency or contracting
28 entity.
29
30 (6) The settlement approval process in the event the parties reach agreement at the
31 mediation.
32

33 *The provisions of this §800.472 adopted to be effective August 23, 2000, 25 TexReg 8063*
34

35 [Return to Table of Contents](#)
36

37 **§800.473. Qualifications and Immunity of the Mediator.**
38

- 39 (a) The mediator shall possess the qualifications required under Civil Practice and
40 Remedies Code, §154.052, be subject to the standards and duties prescribed by Civil
41 Practice and Remedies Code, §154.053, and have the qualified immunity prescribed
42 by Civil Practice and Remedies Code, §154.055, if applicable.
43
44 (b) The parties should decide whether, and to what extent, knowledge of the subject
45 matter and experience in mediation would be advisable for the mediator.
46

- 1 (c) The parties should obtain from the prospective mediator the ethical standards that
2 will govern the mediation.
3

4 *The provisions of this §800.473 adopted to be effective August 23, 2000, 25 TexReg 8063*
5

6 [Return to Table of Contents](#)
7

8 **§800.481. Other Assisted Negotiation and Mediation Processes.**
9

- 10 (a) Parties to a contract dispute under Texas Government Code, Chapter 2260 may
11 agree, either contractually or when a dispute arises, to use other assisted negotiation
12 and mediation (alternative dispute resolution) processes in addition to negotiation
13 and mediation to resolve their dispute.
14
- 15 (b) Factors Supporting the Use of Other Assisted Negotiation or Mediation Processes.
16 The following factors may help parties decide whether one or more of the other
17 assisted negotiation and mediation processes could help resolve their dispute:
18
- 19 (1) The parties recognize the benefits of an agreed resolution of the dispute;
20
 - 21 (2) The expense of proceeding to contested case hearing at SOAH is substantial
22 and might outweigh any potential recovery;
23
 - 24 (3) The parties want an expedited resolution;
25
 - 26 (4) The ultimate outcome is uncertain;
27
 - 28 (5) There exists factual or technical complexity or uncertainty which would
29 benefit from expertise of a third-party expert for technical assistance or fact-
30 finding;
31
 - 32 (6) The parties are having substantial difficulty communicating effectively;
33
 - 34 (7) A mediator third party could facilitate the parties' realistic evaluation of their
35 respective cases;
36
 - 37 (8) There is an on-going relationship that exists between parties;
38
 - 39 (9) The parties want to retain control over the outcome;
40
 - 41 (10) There is a need to develop creative alternatives to resolve the dispute;
42
 - 43 (11) There is a need for flexibility in shaping relief;
44
 - 45 (12) The other side has an unrealistic view of the merits of their case; or

- 1
2 (13) The parties (or aggrieved persons) need to hear an evaluation of the case from
3 someone other than their lawyers.
4

5 *The provisions of this §800.481 adopted to be effective August 23, 2000, 25 TexReg 8063*
6

7 [Return to Table of Contents](#)
8

9 **§800.482. Methods of Other Assisted Negotiation and Mediation Processes.**
10

- 11 (a) Methods. The Agency may elect any of the following methods, or a combination of
12 these methods, or any assisted negotiation process if agreed to by the parties, in
13 seeking resolution of disputes or other controversy arising under Texas Government
14 Code, Chapter 2260. If the parties agree to use another assisted negotiation or
15 mediation procedure, the parties shall agree in writing to a detailed description of the
16 process prior to engaging in the process that may include one or more of the
17 following:
18
- 19 (1) Mediation as set forth in this subchapter;
 - 20
 - 21 (2) Early evaluation by a third-party neutral;
 - 22
 - 23 (3) Neutral fact-finding by an expert; or
 - 24
 - 25 (4) Mini-trial.
 - 26
- 27 (b) Early evaluation by a third party.
28
- 29 (1) This is a confidential conference where the parties and their counsel present
30 the factual and legal bases of their claim and receive a non-binding assessment
31 by an experienced neutral with subject-matter expertise or with significant
32 experience in the substantive area of law involved in the dispute.
33
 - 34 (2) After summary presentations, the third-party neutral identifies areas of
35 agreement for possible stipulations, assesses the strengths and weaknesses of
36 each party's position, and estimates, if possible, the likelihood of liability and
37 the dollar range of damages that appear reasonable to him or her.
38
 - 39 (3) This is a less complicated procedure than the mini-trial, described in
40 subsection (d) of this section. It may be appropriate for only some issues in
41 dispute, for example, where there are clear-cut differences over the appropriate
42 amount of damages. This process may be particularly helpful when:
43
 - 44 (A) The parties agree that the dispute can be settled;
 - 45
 - 46 (B) The dispute involves specific legal issues;

- (C) The parties disagree on the amount of damages;
- (D) The opposition has an unrealistic view of the dispute; or
- (E) The neutral is a recognized expert in the subject area or area of law involved.

(c) Neutral fact-finding by an expert.

- (1) In this process, a neutral third-party expert studies a particular issue and reports findings on that issue. The process usually occurs after most discovery in the dispute has been completed and the significance of particular technical or scientific issues is apparent.
- (2) The parties may agree in writing that the fact-finding will be binding on them in later proceedings (and entered into as a stipulation in the dispute if the matter proceeds to contested case hearing), or that it will be advisory in nature, to be used only in further settlement discussions between representatives of the parties. This process may be particularly helpful when:
 - (A) Factual issues requiring expert testimony may be dispositive of liability or damage issues;
 - (B) The use of a neutral is cost effective; or
 - (C) The neutral's findings could narrow factual issues for contested case hearing.

(d) Mini-trial.

- (1) A mini-trial is generally a summary proceeding before a representative of upper management from each party, with authority to settle, and a third-party neutral selected by agreement of the parties. A mini-trial is usually divided into three phases: a limited information exchange phase, the actual hearing, and post-hearing settlement discussions. No written or oral statement made in the proceeding may be used as evidence or an admission in any other proceeding.
- (2) The information exchange stage should be brief, but it must be sufficient for each party to understand and appreciate the key issues involved in the case. At a minimum, parties should exchange key exhibits, introductory statements, and a summary of witnesses' testimony.
- (3) At the hearing, representatives of the parties present a summary of the anticipated evidence and any legal issues that must be decided before the case can be resolved. The third-party neutral presides over the presentation and may

1 question witnesses and counsel, as well as comment on the arguments and
2 evidence. Each party may agree to put on abbreviated direct and cross-
3 examination testimony. The hearing generally takes no longer than 1-2 days.
4

5 (4) Settlement discussions, facilitated by the third-party neutral, take place after
6 the hearing. The parties may ask the neutral to formally evaluate the evidence
7 and arguments and give an advisory opinion as to the issues in the case. If the
8 parties cannot reach an agreed resolution to the dispute, either side may declare
9 the mini- trial terminated and proceed to resolve the dispute by other means.
10

11 (5) Mini-trials may be appropriate when:
12

13 (A) The dispute is at a stage where substantial costs can be saved by a
14 resolution based on limited information gathering;
15

16 (B) The matter justifies the senior executive time required to complete the
17 process;
18

19 (C) The issues involved include highly technical mixed questions of law and
20 fact;
21

22 (D) The matter involves trade secrets or other confidential or proprietary
23 information; or
24

25 (E) The parties seek to narrow the large number of issues in dispute.
26

27 *The provisions of this §800.482 adopted to be effective August 23, 2000, 25 TexReg 8063*
28

29 [Return to Table of Contents](#)
30

31 **§800.491. Settlement Agreement and Approval Procedures.** 32

33 (a) Settlement Process. The parties' settlement approval procedures shall be disclosed by
34 the parties prior to the negotiation, mediation, or other assisted negotiation and
35 mediation process, unless the parties agree otherwise in writing. To the extent
36 possible, the parties shall select negotiators or representatives who are
37 knowledgeable about the subject matter of the dispute, who are in a position to reach
38 agreement, and who can credibly recommend approval of an agreement.
39

40 (b) Initial Settlement Agreement. Any settlement agreement reached during the
41 mediation shall be signed by the representatives of the contractor and the Agency,
42 and shall describe any procedures required to be followed by the parties in
43 connection with final approval of the agreement.
44

45 (c) Final Settlement Agreement.
46

- 1 (1) A final settlement agreement reached during, or as a result of negotiation,
2 mediation, or other assisted negotiation or mediation process that resolves an
3 entire claim or any designated and severable portion of a claim, shall be in
4 writing and signed by representatives of the contractor and the Agency who
5 have authority to bind each respective party.
6
7 (2) If the settlement agreement does not resolve all issues raised by the claim and
8 counterclaim, the agreement shall identify the issues that are not resolved.
9
10 (3) A partial settlement does not waive a contractor's rights under the Texas
11 Government Code, Chapter 2260, as to the parts of the claim that are not
12 resolved.
13

14 (d) Confidentiality of Mediation and Final Settlement Agreement.

- 15
16 (1) A mediation conducted under this section is confidential in accordance with
17 Texas Government Code, §2009.054.
18
19 (2) The confidentiality of a final settlement agreement to which the Agency is a
20 signatory that is reached as a result of the mediation is governed by Texas
21 Government Code, Chapter 552.
22

23 *The provisions of this §800.491 adopted to be effective August 23, 2000, 25 TexReg 8063*

24
25 [Return to Table of Contents](#)

26
27 **§800.492. Request for Contested Case Hearing.**

- 28
29 (a) If a claim for breach of contract is not resolved in its entirety through negotiation,
30 mediation, or other assisted negotiation or mediation process, in accordance with this
31 subchapter on or before the 270th day after the Agency receives the notice of claim,
32 or after the expiration of any extension agreed to by the parties pursuant to this
33 subchapter, the contractor may file a request with the Agency for a contested case
34 hearing before SOAH.
35
36 (b) A request for a contested case hearing shall state the legal and factual basis for the
37 claim, and shall be delivered to the chief administrative officer of the Agency or
38 other officer designated in the contract to receive notice within a reasonable time
39 after the 270th day or the expiration of any written extension agreed to pursuant to
40 this subchapter.
41
42 (c) The Agency shall forward the contractor's request for contested case hearing to
43 SOAH within a reasonable period of time, not to exceed 10 business days, after
44 receipt of the request.
45

- 1 (d) The parties may agree to submit the case to SOAH before the 270th day after the
2 notice of claim is received by the Agency if they have achieved a partial resolution
3 of the claim or if an impasse has been reached in the negotiations and proceeding to
4 a contested case hearing would serve the interests of justice.
5

6 *The provisions of this §800.492 adopted to be effective August 23, 2000, 25 TexReg 8063;*
7 *amended to be effective February 7, 2011, 36 TexReg 592*
8

9 [Return to Table of Contents](#)

10
11 **SUBCHAPTER L. WORKFORCE DIPLOMA PILOT PROGRAM**
12

13 **§800.500. Purpose.**
14

15 The purpose of the Workforce Diploma Pilot Program is to reimburse qualified providers
16 that provide assistance to adult students to obtain high school diplomas and attain
17 industry-recognized credentials and to develop technical career readiness and
18 employability skills to the extent that funding is available for this purpose.
19

20 *The provisions of this §800.500 adopted to be effective January 25, 2021, 46 TexReg 577*
21

22 [Return to Table of Contents](#)

23
24 **§800.501. Definitions.**
25

26 The following words and terms, when used in this subchapter, shall have the following
27 meanings, unless the context clearly indicates otherwise.
28

- 29 (1) Academic resiliency--A student's ability to persist and to academically succeed
30 despite adversity.
31
- 32 (2) Academic skill intake assessment--A formal and/or informal assessment used at
33 intake to gather information on a student's current knowledge and skills in
34 specific academic areas (for example, literacy and numeracy). That information
35 is then used to determine the student's appropriate instructional level as well as
36 accommodations and/or remediation that the student needs.
37
- 38 (3) Career Pathway--A combination of rigorous and high-quality education,
39 training, and other services that:
- 40 (A) aligns with the skill needs of industries in the economy of the state or
41 regional economy involved;
42
- 43 (B) prepares an individual to be successful in any of a full range of secondary
44 or postsecondary education options;
45
46

- 1 (C) includes counseling to support an individual in achieving the individual's
2 education and career goals;
3
4 (D) includes, as appropriate, education offered concurrently with, and in the
5 same context as, workforce preparation activities and training for a
6 specific occupation or occupational cluster;
7
8 (E) organizes education, training, and other services to meet the particular
9 needs of an individual in a manner that accelerates the educational and
10 career advancement of the individual to the extent practicable;
11
12 (F) enables an individual to attain a secondary school diploma or its
13 recognized equivalent, and at least one recognized postsecondary
14 credential; and
15
16 (G) helps an individual enter or advance within a specific occupation or
17 occupational cluster (29 USC §3102, Definitions).
18
19 (4) Eligible participant--An individual who is over the age of compulsory school
20 attendance, as prescribed by Texas Education Code, §25.085, and as required by
21 the Agency, must:
22
23 (A) be a Texas resident;
24
25 (B) lack a high school diploma;
26
27 (C) be authorized to work in the United States; and
28
29 (D) be able to work immediately upon graduation from the program.
30
31 (5) Employability skills certification program--Refers to a certification in general
32 skills that are necessary for success in the labor market at all employment levels
33 and in all industry sectors. Employability skills include problem-solving,
34 collaboration, organization, and adaptability.
35
36 (6) Half credit--The standard award of credit given for a course that lasts one
37 semester, and which is based on the Carnegie Unit. When determining credits,
38 qualified providers should consider instructional time plus the amount of time
39 that the student would take to complete the coursework in a high school
40 semester or academic year. In traditional education models, a student typically
41 attends a class for 55 to 60 minutes a day for four or five days a week in
42 addition to studying independently.
43
44 (7) High school diploma--A credential awarded by an entity, based on completion
45 of all state graduation requirements as outlined in Texas Education Code,

1 §28.025 and §39.023 and 19 TAC Chapter 74 (relating to Curriculum
2 Requirements) and Chapter 101 (relating to Assessment).
3

- 4 (8) Industry-recognized credential--A state-approved credential verifying an
5 individual's qualifications and competence and is issued by a third party with
6 the relevant authority to issue such credentials (US Department of Labor, 2010).
7 Industry-recognized credentials offered by qualified providers must align with
8 the Agency's mission to target high-growth, high-demand, and emerging
9 occupations that are crucial to the state and local workforce economies, and
10 must reflect the target occupations for the workforce areas in which services
11 will be provided. Qualified providers may also reference the list of industry-
12 based certifications for public school accountability published by the Texas
13 Education Agency.
14
- 15 (9) Learning Plan Development--The process by which an individualized learning
16 plan is developed after student intake; it is maintained through coaching and
17 mentoring.
18
- 19 (10) One credit--The standard award credit given for a course that lasts a full
20 academic year, and which is based on the Carnegie Unit. When determining
21 credits, qualified providers should consider instructional time plus the amount
22 of time that the student would take to complete the coursework in a high school
23 semester or academic year. In traditional education models, a student typically
24 attends a class for 55 to 60 minutes a day for four or five days a week, in
25 addition to studying independently.
26
- 27 (11) Program--Refers to the Workforce Diploma Pilot Program, set forth in Texas
28 Labor Code, Chapter 317.
29
- 30 (12) Qualified provider--A provider that may participate in the Program and receive
31 reimbursement and that:
32
- 33 (A) is a public, nonprofit, or private entity that is:
 - 34 (i) authorized under the Texas Education Code or other state law to
35 grant a high school diploma; or
 - 36 (ii) accredited by a regional accrediting body, as established by the US
37 Secretary of Education, pursuant to 20 USCS §1099b, Recognition
38 of Accrediting Agency or Association;
 - 39 (B) has at least two years of experience providing dropout reengagement
40 services to adult students, including recruitment, learning plan
41 development, and proactive coaching and mentoring, leading to the
42 obtainment of a high school diploma;
 - 43 (C) is equipped to:
44
45
46
47

- 1
2 (i) provide:
3
4 (I) academic skill intake assessment and transcript evaluations;
5
6 (II) remediation coursework in literacy and numeracy;
7
8 (III) a research-validated academic resiliency assessment and
9 intervention;
10
11 (IV) employability skills development aligned to employer needs;
12
13 (V) career pathways coursework;
14
15 (VI) preparation for the attainment of industry-recognized
16 credentials; and
17
18 (VII) career placement services; and
19
20 (ii) develop a learning plan that integrates academic requirements and
21 career goals; and
22
23 (D) offers a course catalog that includes all courses necessary to meet high
24 school graduation requirements in Texas, as authorized under 19 TAC
25 Chapter 74, Subchapter B (relating to Graduation Requirements).
26
27 (13) Regional accrediting body--Must meet the criteria established by the US
28 Secretary of Education pursuant to 20 USCS §1099b, Recognition of
29 Accrediting Agency or Association, and appear on the US Secretary of
30 Education's list of federally recognized accrediting agencies in the *Federal*
31 *Register*, as stated in 34 CFR §602.2. A copy of the list may be obtained from
32 the US Department of Education.
33

34 *The provisions of this §800.501 adopted to be effective January 25, 2021, 46 TexReg 577*

35
36 [Return to Table of Contents](#)

37
38 **§800.502. Request for Qualifications and List of Qualified Providers.**

- 39
40 (a) The Agency will identify qualified providers to participate in the Program through a
41 statewide Request for Qualifications (RFQ) process conducted in accordance with
42 state requirements. The Agency will publish an RFQ no later than October 15th of
43 each year to identify Program providers.
44

- 1 (b) Potential providers will apply directly to the Agency using the RFQ process, and,
2 once identified as a qualified provider, must meet all deadlines, requirements, and
3 guidelines set forth in the published RFQ.
4
- 5 (c) The Agency will publish a list of qualified providers no later than November 15th of
6 each year to participate in the Program the next calendar year.
7
- 8 (d) Each provider on the qualified provider list will be eligible to receive monthly
9 reimbursements for this Program based on monthly invoices submitted to the
10 Agency, as prescribed in the RFQ's terms.
11
- 12 (e) Each year, the Agency shall review and update the list of qualified providers.
13 Qualified providers that do not meet the minimum performance standards outlined in
14 §800.503 of this subchapter will be placed on probation for the remainder of the
15 calendar year. Failure to meet both minimum performance standards for two
16 consecutive years will result in disqualification from the Program.
17
- 18 (f) The Agency's determinations in the RFQ process will be based on the affirmation of
19 the qualified provider to effectively perform all services and activities outlined in
20 Texas Labor Code, Chapter 317.
21

22 *The provisions of this §800.502 adopted to be effective January 25, 2021, 46 TexReg 577*
23

24 [Return to Table of Contents](#)
25

26 **§800.503. Minimum Performance Standards.**
27

- 28 (a) The minimum performance standards for the calendar year must include:
29
- 30 (1) a graduation rate, as defined in §800.504(a) of this subchapter, of at least 50
31 percent; and
32
- 33 (2) a program cost per graduate of \$7,000 or less, as calculated pursuant to
34 §800.504(b) of this subchapter.
35
- 36 (b) Each year, the Agency shall review data from each participating provider to ensure
37 that the services offered by the provider are meeting the minimum performance
38 standards. If the Agency determines that a provider did not meet the minimum
39 performance standards in the previous calendar year, the Agency shall place the
40 provider on probationary status for the remainder of the current calendar year.
41
- 42 (c) The Agency shall remove any provider that does not meet the minimum performance
43 standards for two consecutive calendar years from the provider list published under
44 Texas Labor Code, §317.005.
45

46 *The provisions of this §800.503 adopted to be effective January 25, 2021, 46 TexReg 577*

1
2 [Return to Table of Contents](#)
3

4 **§800.504. Graduation Rate and Graduate Cost Formulas.**
5

- 6 (a) Graduation rate is defined as and determined by dividing the number of students who
7 received a high school diploma from the qualified provider by the number of students
8 for which the qualified provider sought and received reimbursements.
9
- 10 (b) The Program cost per graduate formula is determined as the product of the number of
11 students who received a high school diploma the previous calendar year multiplied by
12 \$7,000; the product may not exceed the total annual cost (reimbursements paid) to the
13 qualified provider for the total number of services provided.
14

15 *The provisions of this §800.504 adopted to be effective January 25, 2021, 46 TexReg 577*
16

17 [Return to Table of Contents](#)
18

19 **§800.505. Reimbursement Rates.**
20

- 21 (a) The reimbursement amounts that a qualified provider may receive, to the extent that
22 funding is available, shall be as follows:
23
- 24 (1) \$250 for completion of a half credit;
 - 25
 - 26 (2) \$250 for completion of an employability skills certification program equal to at
27 least one credit or the equivalent;
 - 28
 - 29 (3) \$250 for the attainment of an industry-recognized credential requiring not more
30 than 50 hours of training;
 - 31
 - 32 (4) \$500 for the attainment of an industry-recognized credential requiring at least
33 50 but not more than 100 hours of training;
 - 34
 - 35 (5) \$750 for the attainment of an industry-recognized credential requiring more
36 than 100 hours of training; and
 - 37
 - 38 (6) \$1,000 for the obtainment of a high school diploma.
- 39 (b) A provider shall not be reimbursed more than one time for one attainment of an
40 industry-recognized credential.
41

42 *The provisions of this §800.505 adopted to be effective January 25, 2021, 46 TexReg 577*
43

44 [Return to Table of Contents](#)
45