

1 **CHAPTER 802. INTEGRITY OF THE TEXAS WORKFORCE SYSTEM**

2
3 **SUBCHAPTER A. PURPOSE AND GENERAL PROVISIONS**

4
5 [§802.1. Purpose and General Provisions](#)

6
7 [§802.2. Definitions](#)

8
9 **SUBCHAPTER B. CONTRACTING**

10
11 [§802.21. Board Contracting Guidelines](#)

12
13 [§802.22. Board Contract Limits](#)

14
15 **SUBCHAPTER C. LOCAL WORKFORCE DEVELOPMENT BOARD RESTRICTIONS**

16
17 [§802.41. Board Member Conflicts of Interest](#)

18
19 [§802.42. Employment of Former Board Employees by Workforce Service Providers](#)

20
21 [§802.43. Prohibition against Directly Delivering Services](#)

22
23 [§802.44. Service Delivery Waiver Requests](#)

24
25 **SUBCHAPTER D. AGENCY MONITORING ACTIVITIES**

26
27 [§802.61. Purpose](#)

28
29 [§802.62. Program and Fiscal Monitoring](#)

30
31 [§802.63. Program Monitoring Activities](#)

32
33 [§802.64. Fiscal Monitoring Activities](#)

34
35 [§802.65. Agency Monitoring Reports and Resolution](#)

36
37 [§802.66. Access to Records](#)

38
39 [§802.67. Commission Evaluation of Board Oversight Capacity](#)

40

1 SUBCHAPTER E. BOARD, WORKFORCE SERVICE PROVIDER, AND AEL GRANT
2 RECIPIENT MONITORING ACTIVITIES

3
4 §802.81. Scope and Purpose

5
6 §802.82. Board and Workforce Service Provider Monitoring

7
8 §802.83. Risk Assessment

9
10 §802.84. Monitoring Plan

11
12 §802.85. Controls over Monitoring

13
14 §802.86. Reporting and Resolution Requirements

15
16 §802.87. Independent Audit Requirements

17
18 SUBCHAPTER F. PERFORMANCE AND ACCOUNTABILITY

19
20 §802.101. Scope and Purpose

21
22 §802.102. Performance Requirements and Expectations

23
24 §802.103. Performance Review and Assistance

25
26 §802.104. Performance Improvement Actions

27
28 SUBCHAPTER G. CORRECTIVE ACTIONS

29
30 §802.121. Imposition of Corrective Actions and Corrective Action Plans

31
32 §802.122. Intent to Sanction

33
34 §802.123. Sanctions

35
36 §802.124. Penalties for Noncompliance with Requirements

37
38 §802.125. Sanction Determination

39
40 SUBCHAPTER H. REMEDIES

41
42 §802.141. Informal Conferences and Informal Dispositions

- 1 [§802.142. Appeal](#)
- 2
- 3 [§802.143. Hearing Procedures](#)
- 4
- 5 [§802.144. Postponements, Continuances, and Withdrawals](#)
- 6
- 7 [§802.145. Evidence](#)
- 8
- 9 [§802.146. Hearing Officer Independence and Impartiality](#)
- 10
- 11 [§802.147. Ex Parte Communications](#)
- 12
- 13 [§802.148. Hearing Decision](#)
- 14
- 15 [§802.149. Motion for Reopening](#)
- 16
- 17 [§802.150. Motion for Rehearing](#)
- 18
- 19 [§802.151. Finality of Decision](#)
- 20
- 21 [§802.152. Repayment](#)
- 22

23 **SUBCHAPTER I. WORKFORCE AWARDS**

- 24
- 25 [§802.161. Scope and Purpose](#)
- 26
- 27 [§802.162. Definitions](#)
- 28
- 29 [§802.163. Types of Workforce Awards](#)
- 30
- 31 [§802.165. Workforce Award Recipient Classification](#)
- 32
- 33 [§802.166. Notification](#)
- 34
- 35 [§802.167. Extraordinary Circumstances](#)
- 36

37 **SUBCHAPTER J. LOCAL WORKFORCE DEVELOPMENT AREA APPEALS**

- 38
- 39 [§802.170. Appeal of Denial of Local Workforce Development Area Certification](#)
- 40
- 41
- 42
- 43

1 **CHAPTER 802. INTEGRITY OF THE TEXAS WORKFORCE SYSTEM**

2
3 **SUBCHAPTER A. PURPOSE AND GENERAL PROVISIONS**

4
5 **§802.1. Purpose and General Provisions.**

- 6
7 (a) The purpose of the rules contained in this subchapter is to implement Texas
8 Government Code, §2308.264 and §2308.267, including provisions relating to
9 directly delivering services, Local Workforce Development Board (Board)
10 contracting guidelines, and other conflict of interest provisions, and to implement
11 Texas Labor Code, Chapter 315, regarding Adult Education and Literacy (AEL)
12 programs.
13
14 (b) It is the intent of the Commission that these rules strengthen the confidence of the
15 public in the Texas workforce system.
16
17 (c) A Board may set local policies that are more restrictive than those set forth in this
18 subchapter.
19
20 (d) A Board shall develop the policies and procedures required by this subchapter.
21
22 (e) A Board member with an existing contract for workforce services shall comply with
23 this subchapter no later than the earliest of the following:
24
25 (1) the expiration of the contract;
26
27 (2) the contract renewal date; or
28
29 (3) the expiration of the Board member's term or the Board member's resignation.
30
31 (f) Pursuant to Texas Government Code, Chapter 551 (Open Meetings Act), a Board
32 shall:
33
34 (1) post appropriate notice;
35
36 (2) ensure that all public business or public policy over which the Board has
37 supervision or control is discussed, considered, or acted upon during a properly
38 posted and convened open meeting; and
39
40 (3) prepare and retain minutes or tape recordings of each open meeting of the
41 Board. The minutes shall:
42
43 (A) state the subject of each deliberation; and

1 (B) indicate each vote, order, decision, or other action taken.

2
3 *The provisions of this §802.1 adopted to be effective February 7, 2011, 36 TexReg 604;*
4 *amended to be effective February 24, 2014, 39 TexReg 1201*

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

7
8 **§802.2. Definitions.**

9
10 In addition to the definitions contained in §800.2 and §801.23 of this title, the following
11 words or terms shall have the following meanings, unless the context clearly indicates
12 otherwise.

- 13
14 (1) Agency grantees--Grantees that receive funding from the Agency, such as
15 Skills Development Fund, Wagner-Peyser 7(b), and Workforce Investment Act
16 (WIA) statewide, to provide workforce services.
- 17
18 (2) Appearance of a conflict of interest--A circumstance in which the action of a
19 Board member, Board employee, workforce service provider, or workforce
20 service provider employee in a decision-making position appears to be:
- 21
22 (A) influenced by considerations of one or more of the following: gain to the
23 person, entity, or organization for which the person has an employment
24 interest, substantial financial interest, or other interest, whether direct or
25 indirect (other than those consistent with the terms of the contract); or
26
- 27 (B) motivated by design to gain improper influence over the Commission,
28 the Agency, or the Board.
- 29
30 (3) Board decision-making position--A position with a Board that has final
31 decision-making authority or final recommendation authority on matters that
32 directly affect workforce service providers. A Board decision-making position
33 is one that performs the function of a Board's executive director, deputy
34 executive director, chief financial officer, lead contract manager, or lead
35 contract monitor.
- 36
37 (4) Conflict of interest--A circumstance in which a Board member, Board
38 employee, workforce service provider, or workforce service provider's
39 employee is in a decision-making position and has a direct or indirect interest,
40 particularly a substantial financial interest, that influences the individual's
41 ability to perform job duties and fulfill responsibilities.
- 42
43 (5) Corrective Action Plan--A plan developed and imposed by the Agency that
44 requires a Board or Agency grantee to take Agency-identified actions within a
45 specified time frame designed to correct specific instances of noncompliance
46 or other failures.

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- (6) Hearing--An informal, orderly, and readily available proceeding held before an impartial hearing officer at which a party or hearing representative may present evidence to show that the Agency's determination of sanctions shall be reversed, affirmed, or modified.
 - (7) Hearing officer--An Agency employee designated to conduct hearings and issue proposals for decision.
 - (8) Hearing representative--Any individual authorized by a party to assist the party in presenting the party's appeal. A hearing representative may be legal counsel or another individual. Each party may have a hearing representative to assist in presenting the party's appeal.
 - (9) Level-one sanction--A sanction imposed by the Agency on a Board or Agency grantee for significant inability or failure to perform as required by the Agency, including performing or failing to perform due to a sanctionable act as described in this subchapter. A level-one sanction may be associated with the imposition of one or more penalties as referenced in this chapter.
 - (10) Level-two sanction--A higher sanction than level one imposed by the Agency on a Board or Agency grantee for severe inability or failure to perform as required by the Agency, including performing or failing to perform due to a sanctionable act as described in this chapter. A level-two sanction may be associated with the imposition of more severe penalties than those imposed on a Board or Agency grantee under a level-one sanction.
 - (11) Level-three sanction--The highest sanction level imposed by the Agency on a Board or Agency grantee for extreme inability or failure to perform as required by the Agency, including performing or failing to perform due to a sanctionable act as described in this chapter. A level-three sanction may be associated with the imposition of the most severe penalties imposed on the Board or Agency grantee.
 - (12) Particular matter--A specific investigation, application, request for a ruling or determination, rulemaking proceeding, administrative proceeding, contract, claim, or judicial proceeding, or any other proceeding as defined in Texas Government Code §572.054(h)(2).
 - (13) Party--The person or entity with the right to participate in a hearing authorized by applicable statute or rule.
 - (14) Substantial financial interest--An interest in a business entity in which a person:

- 1 (A) owns 10 percent or more of the stock, shares, fair market value, or other
2 interest in the business entity;
3
4 (B) owns more than \$5,000 of the fair market value of the business entity;
5
6 (C) owns real property if the interest is an equitable or legal ownership with a
7 fair market value of \$2,500 or more used for the business entity;
8
9 (D) receives funds from the business entity that exceed 10 percent of the
10 person's gross income for the previous year;
11
12 (E) is a compensated member of the board of directors or other governing
13 board of the business entity;
14
15 (F) serves as an elected officer of the business entity; or
16
17 (G) is related to a person in the first degree by consanguinity or affinity, as
18 determined under Texas Government Code, Chapter 573, who has a
19 substantial financial interest in the business entity, as listed in
20 subparagraphs (A) through (F) of this section. First degree of
21 consanguinity or affinity means the person's parent, child, adopted child,
22 or spouse.
23
24 (15) Workforce service provider--An entity or individual under contract with a
25 Board to operate:
26
27 (A) one or more Workforce Solutions Offices; or
28
29 (B) one or more programs (e.g., child care) or components of one or more
30 programs (e.g., issuing checks for youth participating in summer
31 employment or performing child care billing).
32
33 (16) Workforce service provider employee in a decision-making position--A
34 position with a workforce service provider that includes the ability to commit
35 or bind the provider to a particular course of action with respect to carrying out
36 the provider's duties and activities under the contract.
37

38 *The provisions of this §802.2 adopted to be effective February 7, 2011, 36 TexReg 604*
39

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

42 **SUBCHAPTER B. CONTRACTING**

43 **§802.21. Board Contracting Guidelines.**

- 44 (a) Fiscal Integrity Provisions.
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- (1) A Board shall develop fiscal integrity evaluation indicators designed to appraise the fiscal integrity of its workforce service providers.
- (2) A Board shall assess its workforce service providers to ensure the providers meet the requirements of the Board's fiscal integrity evaluation based on the following schedule:
 - (A) contracts under \$100,000--the fiscal indicators must be verified prior to the award of the contract and at each renewal of the contract;
 - (B) contracts between \$100,000 and \$500,000--the fiscal indicators must be verified prior to the award of the contract, at each renewal of the contract, and not less than biennially; and
 - (C) contracts over \$500,000--the fiscal indicators must be verified prior to the award of the contract, at each renewal of the contract, and not less than once annually.
- (3) The fiscal integrity evaluation shall include the following provisions for ensuring that workforce service providers are meeting performance measures in compliance with requirements contained in:
 - (A) federal and state statutes and regulations and directives of the Commission or Agency;
 - (B) Office of Management and Budget (OMB) circulars applicable to the entity, such as OMB Circulars A-21, A-87, or A-122, and the Office of the Governor's Uniform Grant Management Standards; and
 - (C) any other safeguards a Board has identified that are designed to ensure the proper and effective use of funds placed under the control of its workforce service providers.
- (4) The fiscal integrity evaluation shall also include the review and consideration of the prospective or renewing workforce service provider's prior three-year financial history before the Board awards or renews a workforce service contract. The review shall include any adverse judgments or findings, such as administrative audit findings; Commission, Agency, or Board monitor findings; or sanctions by a Board or court of law.
- (5) The fiscal integrity evaluation may include provisions such as accounting for program income in accordance with federal regulations, resolving questioned costs and the repayment of disallowed costs in a timely manner, and safeguarding fixed assets, as well as those referenced in the Agency's Financial Manual for Grants and Contracts.

1
2 (b) Bonding, Insurance, and Other Methods of Securing Funds to Cover Losses.
3

- 4 (1) A Board shall ensure that at least 10 percent of the funds subject to the control
5 of the workforce service providers is protected through bonds, insurance,
6 escrow accounts, cash on deposit, or other methods to secure the funds
7 consistent with this subchapter. A Board and its workforce service providers
8 may, consistent with this section, use any method or combination of methods
9 to meet this requirement. At the Board's discretion, the Board may pay for the
10 bonding, insurance, or other protection methods or require its workforce
11 service providers, to the extent allowable under state and federal law, to pay
12 for such protection.
13
- 14 (2) In conducting the fiscal integrity evaluation required in this section, a Board
15 may determine that more than 10 percent of the funds subject to the control of
16 its workforce service providers shall be secured through bonds, insurance,
17 escrow accounts, or other methods consistent with this subchapter.
18
- 19 (3) Escrow of funds may also be used to satisfy the requirements of this subsection
20 provided that:
21
- 22 (A) the funds placed in escrow require the signature of persons other than the
23 persons with signatory authority for the Board's workforce service
24 providers;
 - 25
 - 26 (B) the funds do not lapse due to requirements for timely expenditure of
27 funds; and
 - 28
 - 29 (C) this provision does not conflict with any provision in contract, rule, or
30 statute for the timely expenditure of funds.
31
- 32 (4) If a bond is used, a Board shall ensure that the bond is executed by a corporate
33 surety or sureties holding certificates of authority, authorized to do business in
34 the state of Texas.
35
- 36 (5) A Board shall ensure, based on the schedule referenced in subsection (a)(2) of
37 this section, that each of its workforce service providers is required to verify
38 that:
39
- 40 (A) the insurance or bond policy is valid, premiums are paid to date, the
41 company is authorized to provide the bonding or insurance, and the
42 company is not in receivership, bankruptcy, or some other status that
43 would jeopardize the ability to draw upon the policy;
 - 44
 - 45 (B) the escrow account balances are at an appropriate level;
 - 46

- 1 (C) the method of securing the funds has not been withdrawn, drawn upon,
2 obligated for another purpose, or is no longer valid for use as the method
3 of security; and
4
- 5 (D) other such protections as are applicable and relied upon by the Board are
6 verified as in force.
7
- 8 (6) A Board shall ensure that the workforce service providers are required to
9 disclose any changes in and circumstances regarding the method of securing or
10 protecting the funds under the workforce service providers' control.
11
- 12 (c) Standards of Conduct. A Board shall ensure that the workforce service providers:
13
- 14 (1) comply with federal and state statutes and regulations regarding standards of
15 conduct and conflict of interest provisions including, but not limited to, the
16 following:
17
- 18 (A) 29 C.F.R. §97.36(b)(3), which includes requirements from the Uniform
19 Administrative Requirements for Grants and Cooperative Agreements to
20 State and Local Governments;
21
- 22 (B) professional licensing requirements, when applicable; and
23
- 24 (C) applicable OMB circular requirements and the Office of the Governor's
25 Uniform Grant Management Standards.
26
- 27 (2) avoid any conflict of interest or any appearance of a conflict of interest; and
28
- 29 (3) refrain from using nonpublic information gained through a relationship with
30 the Commission, an Agency employee, a Board, or a Board employee, to seek
31 or obtain financial gains that would be a conflict of interest or the appearance
32 of a conflict of interest.
33
- 34 (d) Disclosures. A Board shall require its workforce service providers to disclose the
35 following:
36
- 37 (1) Matters Subject to Disclosure. A Board shall ensure that its workforce service
38 providers promptly disclose in writing the following:
39
- 40 (A) A substantial financial interest that the workforce service provider, or
41 any of its workforce service provider employees in decision-making
42 positions, have in a business entity that is a party to any business
43 transaction with a Board member or Board employee who is in a Board
44 decision-making position;
45

- 1 (B) A gift greater than \$50 in value given to a Board member or Board
2 employee by a workforce service provider or its employees; and
3
4 (C) the existence of any conflict of interest and any appearance of a conflict
5 of interest, or the lack thereof.
6
7 (2) Content of Disclosure. A Board shall ensure that its workforce service
8 providers' written disclosures contain the following:
9
10 (A) information describing the conflict of interest; and
11
12 (B) information describing the appearance of a conflict of interest, and
13 actions the workforce service provider and its employees will take in
14 order to prevent any conflict of interest from occurring.
15
16 (3) Frequency of Disclosure. A Board shall ensure that its workforce service
17 providers disclose:
18
19 (A) at least annually, and as frequently as necessary, any conflict of interest
20 and any appearance of a conflict of interest;
21
22 (B) within 10 days of giving a gift greater than \$50 in value as referenced in
23 this section; and
24
25 (C) at least annually that no conflict of interest and no appearance of a
26 conflict of interest exists.
27
28 (4) Matters Not Subject to Disclosure. This provision does not apply to:
29
30 (A) a financial transaction performed in the course of a contract with the
31 Board; or
32
33 (B) a transaction or benefit that is made available to the general public under
34 the same terms and conditions.
35

36 *The provisions of this §802.21 adopted to be effective February 7, 2011, 36 TexReg 604*
37

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

40 **§802.22. Board Contract Limits.** 41

42 In procuring a new workforce service provider, Boards shall:
43

- 44 (1) procure the workforce service provider for an initial period of at least one year,
45 not to exceed two years, allowing for subsequent renewals during an option
46 period following the conclusion of the initial procurement period;

- 1
2 (2) ensure that the initial procurement and subsequent renewals do not exceed a
3 maximum of five years total; and
4
5 (3) in determining whether to renew a contract during the option period following
6 the completion of the initial procurement period, consider the workforce
7 service provider's performance, oversight of services, reasonableness of cost,
8 and any other locally developed criteria.
9

10 *The provisions of this §802.22 adopted to be effective October 27, 2014, 39 TexReg 8413*

11
12 [Return to Table of Contents](#)

13
14 **SUBCHAPTER C. LOCAL WORKFORCE DEVELOPMENT BOARD RESTRICTIONS**

15
16 **§802.41. Board Member Conflicts of Interest.**

- 17
18 (a) Pursuant to WIA §117(g) (29 U.S.C.A. §2832(g)), this section sets forth the state's
19 Board conflict of interest requirements for disclosure and declaration of a conflict of
20 interest by a Board member.
21
22 (b) A Board member may not vote on any matter that would provide direct financial
23 benefit to the member or the member's immediate family, or on matters of the
24 provision of services by the member or the entity the member represents. No Board
25 member may participate in a decision in which the member has a direct or indirect
26 interest, particularly a financial interest, which is in substantial conflict with the
27 discharge of the duties of the Board.
28
29 (c) A Board member shall avoid even the appearance of a conflict of interest. Prior to
30 taking office, Board members must provide to the Board Chair a written declaration
31 of all substantial business interests or relationships they, or their immediate families,
32 have with all businesses or organizations that have received, currently receive, or are
33 likely to receive contracts or funding from the Board. Such declarations shall be
34 updated within 30 days to reflect any changes in such business interests or
35 relationships. The Board shall appoint an individual to timely review the disclosure
36 information and advise the Board Chair and appropriate members of potential
37 conflicts.
38
39 (d) Prior to a discussion, vote, or decision on any matter before a Board, if a member, or
40 a person in the immediate family of such member, has a substantial interest in or
41 relationship to a business entity, organization, or property that would be pecuniarily
42 affected by any official Board action, that member shall disclose the nature and
43 extent of the interest or relationship and shall abstain from voting on or in any other
44 way participating in the decision on the matter. All such abstentions shall be
45 recorded in the minutes of the Board meeting.
46

1 (e) Each Board must include in its organizational plan or bylaws, or in a separate code
2 of conduct, provisions for penalties, sanctions, or other disciplinary actions for any
3 direct violations of the Board conflict of interest policy. The following definitions
4 must be incorporated into those provisions.
5

6 (1) Immediate family--Any person related within the first degree of affinity
7 (marriage) or consanguinity (blood) to the person involved.
8

9 (2) Substantial interest--A person has a substantial interest:
10

11 (A) in a business entity if:
12

13 (i) the person owns 10 percent or more of the voting stock or shares of
14 the business, owns 10 percent or more, or owns \$5,000 or more, of
15 the fair market value of a business; or
16

17 (ii) funds received by the person from the business exceed 10 percent of
18 the person's gross income for the previous year;
19

20 (B) in real property if the interest is an equitable or legal ownership with a
21 fair market value of \$2,500 or more; or
22

23 (C) if the Board member is related to a person in the first degree of affinity or
24 consanguinity who has a substantial interest as defined in subparagraph
25 (A) or (B) of this paragraph.
26

27 *The provisions of this §802.41 adopted to be effective February 7, 2011, 36 TexReg 604*
28

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

31 **§802.42. Employment of Former Board Employees by Workforce Service Providers.**
32

33 (a) Post-Employment Restriction. In order to avoid a conflict of interest, a Board shall
34 ensure that the Board's workforce service providers shall not employ or otherwise
35 compensate a former Board employee who:
36

37 (1) was in a Board decision-making position as defined in §802.2 of this chapter;
38 and
39

40 (2) was employed or compensated by the Board anytime during the previous 12
41 months.
42

43 (b) Exceptions. Where there is no actual conflict of interest, but there is an appearance
44 of such a conflict, a Board in an open meeting may provide for an exception to the
45 period described in subsection (a) of this section by a vote of two-thirds of the
46 membership present. In making such a determination, the Board shall assess all

1 relevant factors, including, but not limited to, whether there is a critical need for the
2 skills involved, the relative cost and availability of alternatives, and the need to
3 protect the integrity and stability of the Texas workforce system. In such an
4 instance, the Board shall impose whatever terms and conditions it deems necessary
5 to mitigate the appearance of a conflict of interest.
6

7 (c) Corrective Actions. A Board shall ensure that its contracts with workforce service
8 providers require compliance with this section and provide effective enforcement
9 mechanisms allowing it to impose corrective actions, up to and including contract
10 termination, for violation of this section.
11

12 (d) Particular Matter. A Board shall ensure that its workforce service providers shall not
13 employ or otherwise compensate a former Board employee to work on a particular
14 matter that the employee worked on for the Board, as defined in §802.2 of this
15 chapter. Nothing in this section shall prohibit a Board's workforce service provider
16 from employing or otherwise compensating a former employee of the Board who
17 worked on a particular matter for the Board as long as the former Board employee
18 never works on that same particular matter once employed or otherwise compensated
19 by the Board's workforce service provider.
20

21 *The provisions of this §802.42 adopted to be effective February 7, 2011, 36 TexReg 604*
22

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

25 **§802.43. Prohibition against Directly Delivering Services.**
26

27 (a) A Board shall ensure, through the oversight and management of Board policies, that
28 it does not directly deliver or determine eligibility for workforce services in its local
29 workforce development area (workforce area) or contract with the following persons
30 or entities to deliver or determine eligibility for workforce services:
31

32 (1) A Board member;
33

34 (2) A business, organization, or institution that a Board member represents on the
35 Board;
36

37 (3) A Board member's business, organization, or institution in which a Board
38 member has a substantial financial interest; or
39

40 (4) A Board employee.
41

42 (b) The prohibitions in this section do not apply to public education agencies, such as
43 community colleges and independent school districts, that have Board members who
44 fulfill the requirements set forth in Texas Government Code §2308.256(a)(3)(A).
45

- 1 (c) A Board may grant a one-year exception to the prohibitions described in subsection
2 (a) of this section for a community-based organization that fulfills the requirements
3 set forth in Texas Government Code §2308.256(a)(2). The exception can be granted
4 only by a two-thirds vote of the members present in an open meeting and cannot be
5 granted for contracts for the operation of Workforce Solutions Offices.
6
- 7 (d) A Board shall ensure that the Board, its members, or its employees do not directly
8 control the daily activities of its workforce service providers. The Agency shall
9 review a Board's compliance through an examination of the Board's exercise of
10 direction and control over its workforce service providers. The Agency may use the
11 factors for testing the employment status as set out in §821.5 of this title.
12
- 13 (e) Nothing in this section restricts a Board member or a Board member's organization
14 from receiving Texas workforce system services and thereby being a customer of a
15 Board's workforce service providers' services.
16

17 *The provisions of this §802.43 adopted to be effective February 7, 2011, 36 TexReg 604*

18 [Return to Table of Contents](#)

19
20
21 **§802.44. Service Delivery Waiver Requests.**
22

- 23 (a) Purpose of Rule. Texas Government Code §2308.264, §2308.267, and §2308.312 set
24 forth prohibitions regarding service delivery, Board staffing, and developmental
25 services. Only under circumstances that fit the criteria specified in those statutes will
26 requests for waivers be granted.
27
- 28 (b) Boards may submit a waiver request of the following provisions:
29
- 30 (1) Independent Service Delivery. A Board is prohibited from directly providing
31 workforce training and services, including operational functions normally
32 associated with such services such as intake, eligibility determination,
33 assessment, and referral, unless a waiver is obtained.
34
- 35 (2) Separate Staffing. Board staff shall be employed separately and independently
36 of any person who provides workforce training and services, as described in
37 paragraph (1) of this subsection, unless the Board arranges for independent
38 evaluation of any other workforce services provided by the staffing
39 organization and obtains a waiver.
40
- 41 (3) Developmental Services. A person who provides one-stop services at a
42 Workforce Solutions Office shall not also provide developmental services
43 unless a waiver is obtained.
44
- 45 (c) Requesting a Waiver.
46

- 1 (1) Waiver requests shall be submitted to the Commission and contain detailed
2 justification as specified in the respective statutes. The Commission shall
3 review and forward a recommendation to the Texas Workforce Investment
4 Council (TWIC) for consideration. TWIC will forward its recommendation to
5 the Governor for approval.
6
7 (2) In recommending action on such requests, the Commission shall apply only the
8 criteria specified in the respective statutes.
9

10 (d) Duration of Waiver.

- 11
12 (1) A waiver may be granted for a period less than, but not to exceed, the effective
13 term of an approved plan and budget.
14
15 (2) A waiver may be conditioned upon the Board's completion of steps taken to
16 eliminate the need for a waiver.
17

18 *The provisions of this §802.44 adopted to be effective February 7, 2011, 36 TexReg 604*
19

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

22 **SUBCHAPTER D. AGENCY MONITORING ACTIVITIES**
23

24 **§802.61. Purpose.**
25

- 26 (a) The purpose of this subchapter is to set forth the Agency's monitoring provisions and
27 respective responsibilities of Boards, workforce service providers, AEL grant
28 recipients, AEL service providers, and Agency grantees.
29
30 (b) The rules contained in this subchapter apply in addition to any program-specific rules
31 to all programs administered by the Agency, except that to the extent of any conflict,
32 the program-specific rules will govern.
33

34 *The provisions of this §802.61 adopted to be effective February 7, 2011, 36 TexReg 604;*
35 *amended to be effective February 24, 2014, 39 TexReg 1201*
36

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

39 **§802.62. Program and Fiscal Monitoring.**
40

- 41 (a) Boards, workforce service providers, AEL grant recipients, AEL service providers,
42 and Agency grantees shall cooperate with the Agency's program and fiscal
43 monitoring activities, site visits, reviews of documentation, and requests for
44 information. The Agency is committed to ensuring the accountability of Boards,
45 workforce service providers, AEL grant recipients, AEL service providers, and
46 Agency grantees. Therefore, monitoring activities have been developed to:

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- (1) ensure programs achieve intended results;
 - (2) ensure resources are efficiently and effectively used for authorized purposes and are protected from waste, fraud, and abuse; and
 - (3) ensure reliable and timely information is captured and reported to serve as the basis to improve decision-making.
- (b) The Agency shall conduct comprehensive monitoring activities to assess the following for Boards, workforce service providers, AEL grant recipients, AEL service providers, and Agency grantees:
- (1) Progress in achieving program goals and maintaining fiscal accountability. Program and fiscal monitoring activities include site visits, desk reviews, and analyses of both financial and program outcomes to help identify potential weaknesses before such weaknesses result in substandard performance or questioned costs;
 - (2) Compliance with applicable laws, regulations, provisions of contracts and Board plans, and official directives and circulars including, but not limited to, U.S. Department of Labor (DOL) Training and Employment Guidance Letters, DOL Training and Employment Notices, U.S. Department of Health and Human Services guidance letters, U.S. Department of Education, Office of Vocational and Adult Education guidance, Commission rules contained in Part 20 of this title (relating to the Texas Workforce Commission), Texas Workforce Commission Workforce Development (WD) Letters and AEL Letters, the Agency's Financial Manual for Grants and Contracts, and other Agency guidance; and
 - (3) Compliance with the appropriate uniform administrative requirements for grants and agreements applicable to the type of entity receiving funds, as promulgated in the OMB circulars or rules. Monitoring activities shall encompass both financial and programmatic monitoring and shall be evaluated on a periodic basis. Monitoring reviews result in recommendations that provide practical solutions used to take immediate corrective action.
- (c) Boards, workforce service providers, AEL grant recipients, AEL service providers, and Agency grantees are subject to audit and review by the Agency. The Agency may audit and review all relevant records or a sample of the records as needed to determine Board, workforce service provider, AEL grant recipient, AEL service provider, and Agency grantee performance.

- 1
2 (d) Failure to comply with this subchapter shall result in corrective action and possible
3 sanctions pursuant to Subchapter G of this chapter (relating to Corrective Actions).
4

5 *The provisions of this §802.62 adopted to be effective February 7, 2011, 36 TexReg 604;*
6 *amended to be effective February 24, 2014, 39 TexReg 1201*
7

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

10 **§802.63. Program Monitoring Activities.**

11 The Agency shall conduct program monitoring activities to ensure that programs achieve
12 intended results. Processes and procedures used to determine Board, workforce service
13 provider, AEL grant recipient, AEL service provider, and Agency grantee performance
14 may include review and evaluation of one or more of the following:

- 15 (1) Program results or outcomes
16
17 (2) Performance measures
18
19 (3) Reporting accuracy
20
21 (4) Record keeping and file maintenance
22
23 (5) Monitoring functions
24
25 (6) Self-monitoring activities
26
27 (7) Service delivery
28
29 (8) Automated systems and reporting
30
31 (9) Human resources
32
33 (10) Policies and procedures
34

35 *The provisions of this §802.63 adopted to be effective February 7, 2011, 36 TexReg 604;*
36 *amended to be effective February 24, 2014, 39 TexReg 1201*
37

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

40 **§802.64. Fiscal Monitoring Activities.**

- 41
42 (a) The Agency shall conduct fiscal monitoring activities to ensure that resources are
43 efficiently and effectively used for authorized purposes and are protected from
44 waste, fraud, and abuse. Processes and procedures used to determine Board,

1 workforce service provider, AEL grant recipient, AEL service provider, and Agency
2 grantee performance may include the review and evaluation of one or more of the
3 following:

- 4 (1) Accounting and reporting systems
- 5 (2) Budget methodologies
- 6 (3) Cash management practices
- 7 (4) Cost allocation plans and processes
- 8 (5) Cash disbursement compliance and documentation
- 9 (6) Program income identification and reporting
- 10 (7) Insurance coverage and risk exposure
- 11 (8) Oversight and monitoring functions
- 12 (9) Payroll administration
- 13 (10) Purchasing and procurement processes and procedures
- 14 (11) Property accountability and safeguarding

15 (b) Processes and procedures used to determine Board, workforce service provider, AEL
16 grant recipient, AEL service provider, and Agency grantee performance shall include
17 a review, evaluation, and determination regarding compliance with the appropriate
18 uniform administrative requirements for grants and agreements as well as the
19 appropriate cost principles applicable for the type of entity receiving funds as listed
20 in OMB circulars or rules.

21 (c) Processes and procedures used to determine Board, workforce service provider, AEL
22 grant recipient, AEL service provider, and Agency grantee performance shall include

1 a review, evaluation, and determination regarding compliance with the applicable
2 requirements regarding cost categories and cost limitations.

3
4 *The provisions of this §802.64 adopted to be effective February 7, 2011, 36 TexReg 604;*
5 *amended to be effective February 24, 2014, 39 TexReg 1201*

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

8
9 **§802.65. Agency Monitoring Reports and Resolution.**

10
11 (a) Monitoring Report. The Agency's monitoring department shall issue a monitoring
12 report summarizing the results of monitoring activities. The report shall include the
13 observations, findings, questioned costs identified, and recommendations of the
14 monitoring team to the Board, AEL grant recipient, or Agency grantees or
15 contractors. If there are no administrative findings or questioned costs identified as a
16 result of the monitoring review, a management letter will be issued. A monitoring
17 report or management letter issued to a Board will be provided to the following:

- 18
19 (1) Board chair
20
21 (2) Board executive director
22
23 (3) Designated representatives of the US Department of Health and Human
24 Services
25
26 (4) Designated representatives of the US Department of Labor
27
28 (5) Texas Workforce Commissioners
29
30 (6) Agency executive staff

31
32 (b) Initial Resolution Notification. Based on the monitoring report, the Agency's audit
33 resolution department shall issue an initial resolution notification, which notifies a
34 Board, AEL grant recipient, or Agency grantee or contractor of administrative
35 findings and questioned costs. The recipient of an initial resolution notification shall
36 have 45 calendar days from the date the notification is mailed to respond.

- 37
38 (1) Administrative Findings.
39
40 (A) If the administrative findings set forth in the initial resolution notification
41 are resolved, a closure letter is issued.
42
43 (B) If the administrative findings set forth in the initial resolution notification
44 are not resolved, the findings remain open and the Agency's audit
45 resolution department continues to coordinate with the entity until the
46 following year's audit to ensure follow-up.

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- (2) Questioned Costs.
 - (A) If the questioned costs set forth in the initial resolution notification are resolved, a closure letter is issued.
 - (B) If the questioned costs set forth in the initial resolution notification are not resolved, an initial determination is issued.
- (3) Corrective Actions. The Agency may also impose corrective actions under Subchapter G of this chapter at any time during the resolution process.
- (c) Initial Determination. The Agency's audit resolution department shall issue an initial determination notifying a Board, AEL grant recipient, or Agency grantee or contractor of the following:
 - (1) The unresolved questioned costs; and
 - (2) The 60-day period, from issuance of the initial determination, to submit a response, including providing evidence or documentation of the appropriate actions taken.
- (d) Final Determination. If the questioned costs remain unresolved at the end of the 60-day period, the Agency's audit resolution department shall issue a final determination to notify a Board, AEL grant recipient, or Agency grantee or contractor of allowed or disallowed costs and to establish debts.
- (e) If the administrative findings or questioned costs remain unresolved, the Agency's Regulatory Integrity Division may request a sanction, as set forth in §802.125 of this chapter (relating to Sanction Determination).
- (f) Appeal Process
 - (1) Only final determinations regarding questioned costs issued by the Agency may be appealed, pursuant to §802.142 of this chapter (relating to Appeal).
 - (2) Failure by a Board, workforce service provider, AEL grant recipient, AEL service provider, or Agency grantee to timely request a hearing waives the right to a hearing. The final determination shall constitute final Agency action and is not subject to further review.

- 1
2 (3) If an appeal is requested and approved, a hearing officer is designated and the
3 collection of debt is pending until final decision of the hearing.
4

5 *The provisions of this §802.65 adopted to be effective February 7, 2011, 36 TexReg 604;*
6 *amended to be effective February 24, 2014, 39 TexReg 1201; amended to be effective October*
7 *11, 2017, 42 TexReg 5524*

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

10
11 **§802.66. Access to Records.**

12
13 (a) Right of Access

- 14
15 (1) Agency. All books, documents, papers, computer records, or other records
16 prepared by Boards, workforce service providers, AEL grant recipients, AEL
17 service providers, or Agency grantees that are pertinent to the use of any funds
18 administered by the Agency are Agency property. Boards, workforce service
19 providers, AEL grant recipients, AEL service providers, or Agency grantees in
20 possession of such records shall be responsible for their secure and proper
21 maintenance. The Agency or its authorized representatives have the right of
22 timely and unrestricted access to any such records in order to conduct
23 monitoring, audits, and examinations, and to make excerpts, transcripts, and
24 photocopies of such documents.
25
26 (2) Board, AEL grant recipient, or Agency grantee. A Board or its authorized
27 representatives, AEL grant recipient or its authorized representative, and an
28 Agency grantee or its executive leadership, have the right of timely and
29 unrestricted access to any books, documents, papers, computer records, or
30 other records of workforce service providers or AEL service providers, that are
31 pertinent to the use of any funds administered by the Agency, in order to
32 conduct monitoring, audits, and examinations; and to make excerpts,
33 transcripts, and photocopies of such documents.
34
35 (b) The right of access also includes timely and unrestricted access to Board, workforce
36 service provider, AEL grant recipient, AEL service provider, and Agency grantee
37 personnel for the purpose of interviews and discussions related to such documents.
38
39 (c) The right of access is not limited to any required record retention period but shall last
40 as long as the records are retained.
41
42 (d) When a Board's or AEL grant recipient's relationship with the workforce service
43 provider or AEL service provider is terminated, the Board's or AEL grant recipient's
44 responsibility for maintenance and retention of records as well as the Agency's right
45 to access does not end.
46

1 (e) Custody of Records.

2
3 (1) The Agency, Board, or AEL grant recipient may request custody of records if
4 one determines that:

5
6 (A) the records possess long-term retention value; or

7
8 (B) the workforce service provider or AEL service provider is unable or
9 unwilling to physically retain them.

10
11 (2) The Agency may request custody of records from an Agency grantee if the
12 Agency determines that:

13
14 (A) the records possess long-term retention value; or

15
16 (B) the Agency grantee is unable or unwilling to physically retain them.

17
18 (f) To comply with single audit requirements:

19
20 (1) the workforce service provider or AEL service provider shall retain the right of
21 access to records in the custody of the Agency or the Board; and

22
23 (2) the Agency grantee shall retain the right of access to records in the custody of
24 the Agency.

25
26 *The provisions of this §802.66 adopted to be effective February 7, 2011, 36 TexReg 604;*
27 *amended to be effective February 24, 2014, 39 TexReg 1201*

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

30
31 **§802.67. Commission Evaluation of Board Oversight Capacity.**

32
33 (a) This section outlines the process used by the Commission to evaluate Board
34 oversight capacity related to the management of local funds and the delivery of local
35 workforce services.

36
37 (b) The Agency shall evaluate, at least annually, each Board's oversight capacity,
38 including the Board's ability to:

39
40 (1) develop, maintain, and upgrade comprehensive fiscal management systems;

41
42 (2) hire, train, and retain qualified staff to carry out the Board's oversight
43 activities;

44
45 (3) select and oversee workforce service providers to improve the delivery of
46 workforce services;

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- (4) oversee and improve the operations of Workforce Solutions Offices in the Board's service area;
 - (5) manage each workforce service provider's performance across multiple Board programs; and
 - (6) identify and resolve long-standing or severe Board oversight problems and workforce service provider performance issues. In the context of this section, the term "severe" is defined as an issue serious enough to warrant a sanction or intent-to-sanction, as described in §802.122 and §802.123, and the term "long-standing" is defined as an issue that persists for more than one review period.
- (c) The Commission shall approve, in an open meeting, specific criteria to be used in its evaluation of Board oversight capacity and shall communicate these criteria to Boards through issuance of a Workforce Development Letter. The Commission shall approve, in an open meeting, on an as-needed basis, updates to the criteria used to evaluate Board oversight capacity.
- (d) Notwithstanding any other provision of this section, the Commission may consider any extraordinary situation related to any of the factors identified in subsection (b) of this section, including natural disasters.
- (e) Annually, the Commission shall post the results of its evaluation of each Board and each Board's performance on its website with an explanation of the rating, rating criteria, and performance measures in a format that is readily accessible to and understandable by a member of the public.
- (1) The explanation shall include specifically how each of the criteria was applied for each Board.
 - (2) Evaluations shall be performed using information at the Commission's disposal at the time of the evaluation. If no updated information is available, the Commission is not obligated to schedule a review or visit to confirm or obtain new information.
 - (3) The Commission may update the Board ratings more often than annually if the Commission determines new information or circumstances warrant consideration.

The provisions of this §802.67 adopted to be effective February 7, 2011, 36 TexReg 604; amended to be effective November 11, 2015, 40 TexReg 7901; amended to be effective January 8, 2019, 44 TexReg 113

[Return to Table of Contents](#)

1 **SUBCHAPTER E. BOARD, WORKFORCE SERVICE PROVIDER, AND AEL GRANT**
2 **RECIPIENT MONITORING ACTIVITIES**

3
4 **§802.81. Scope and Purpose.**

- 5
6 (a) The purpose of this subchapter is to set forth the provisions governing the
7 monitoring responsibilities of Boards, workforce service providers, and AEL grant
8 recipients.
9 (b) The rules contained in this subchapter apply in addition to any program-specific rules
10 to all programs administered by the Agency, except that to the extent of any conflict,
11 the program-specific rule will govern.
12

13 *The provisions of this §802.81 adopted to be effective February 7, 2011, 36 TexReg 604;*
14 *amended to be effective February 24, 2014, 39 TexReg 1201*

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

17
18 **§802.82. Board and Workforce Service Provider Monitoring.**

- 19
20 (a) Boards, workforce service providers, and AEL grant recipients shall ensure that
21 regular oversight of their own activities and regular monitoring of the activities of
22 their workforce service providers and AEL service providers that receive public
23 funds administered by the Agency, are conducted and completed. Monitoring shall
24 include monitoring of both the fiscal and program performance of the workforce
25 service providers and AEL service providers administering and delivering services.
26 These monitoring activities shall be designed to ensure programs achieve intended
27 results and resources are efficiently and effectively used for authorized purposes and
28 are protected from waste, fraud, and abuse. Monitoring activities shall be planned to
29 focus on areas of highest risk to help ensure the most effective use of monitoring
30 resources.
31
32 (b) Monitoring activities shall assess a workforce service provider's and AEL service
33 provider's compliance with applicable laws, regulations, provisions of contracts and
34 Board plans, and official directives and circulars including, but not limited to, DOL
35 Training and Employment Guidance Letters, DOL Training and Employment
36 Notices, U.S. Department of Health and Human Services guidance letters, U.S.
37 Department of Education Office of Vocational and Adult Education guidance,
38 Commission rules contained in Part 20 of this title, Texas Workforce Commission
39 WD Letters and AEL Letters, the Agency's Financial Manual for Grants and
40 Contracts, and other Agency guidance. The Board and AEL grant recipient shall
41 assess the workforce service provider's and AEL service provider's compliance with
42 the appropriate uniform administrative requirements for grants and agreements
43 applicable to the type of entity receiving funds, as promulgated in OMB circulars or
44 rules. These activities shall encompass both financial and programmatic monitoring
45 and shall be evaluated on a periodic basis. Each Board, workforce service provider,

1 and AEL grant recipient shall conduct regular oversight and monitoring of its
2 workforce service providers or AEL service providers in order to:

- 3
4 (1) determine that expenditures have been charged to the cost categories and
5 within the cost limitations specified in the applicable laws and regulations;
6
7 (2) determine whether or not there is compliance with other provisions of
8 applicable laws and regulations; and
9
10 (3) provide technical assistance as necessary and appropriate.

11 (c) The monitoring function shall include the development and implementation of:

- 12
13
14 (1) a risk assessment tool;
15 (2) a monitoring plan;
16
17 (3) a monitoring program, including established policies and procedures; and
18
19 (4) reporting and resolution processes.

20
21 (d) The Board and workforce service provider, or the AEL grant recipient and AEL
22 service provider, shall develop and implement written policies and procedures that
23 describe and support the monitoring process.
24

25 *The provisions of this §802.82 adopted to be effective February 7, 2011, 36 TexReg 604;*
26 *amended to be effective February 24, 2014, 39 TexReg 1201*
27

28 [Return to Table of Contents](#)

29
30 **§802.83. Risk Assessment.**

- 31
32 (a) Boards, workforce service providers, and AEL grant recipients shall include the use
33 of a risk assessment tool in their monitoring functions.
34
35 (b) The risk assessment tool shall identify high-risk workforce service providers and
36 AEL service providers and high areas of risk within an individual workforce service
37 provider's or AEL service provider's operation. The entity responsible for including
38 the risk assessment tool in its monitoring functions shall be responsible for
39 determining what constitutes high risk or an area of high risk.
40
41 (c) Boards, workforce service providers, and AEL grant recipients shall establish
42 monitoring schedules and monitoring programs that best use monitoring resources.
43 Boards, workforce service providers, and AEL grant recipients shall quantify, as
44 much as possible, and document areas of risk identified for assessment.
45

1 *The provisions of this §802.83 adopted to be effective February 7, 2011, 36 TexReg 604;*
2 *amended to be effective February 24, 2014, 39 TexReg 1201*

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

5
6 **§802.84. Monitoring Plan.**

- 7
8 (a) Boards, workforce service providers, and AEL grant recipients shall develop their
9 own local-level monitoring plan based on the results of the risk assessment. This
10 monitoring plan shall incorporate the following:
11
12 (1) a schedule or timetable for monitoring Agency-funded activities; and
13
14 (2) identification of the type of review planned, such as on-site review,
15 comparative financial analysis, desk review, staff analysis, or other type of
16 appropriate review.
17
18 (b) Boards, workforce service providers, and AEL grant recipients may perform
19 monitoring reviews either formally or informally, but shall incorporate the risk
20 assessment results in scheduling decisions.
21

22 *The provisions of this §802.84 adopted to be effective February 7, 2011, 36 TexReg 604;*
23 *amended to be effective February 24, 2014, 39 TexReg 1201*

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

26
27 **§802.85. Controls over Monitoring.**

28
29 To ensure comprehensive and effective monitoring, Boards, workforce service providers,
30 and AEL grant recipients shall:

- 31
32 (1) require periodic reports from their workforce service providers or AEL service
33 providers outlining monitoring reviews, noncompliance issues, and the status
34 of corrective actions;
35
36 (2) ensure that a briefing regarding monitoring activities and findings is provided
37 to the Board or appropriate Board subcommittee at regularly scheduled
38 meetings, or to AEL consortium members, as applicable;
39
40 (3) require an annual evaluation of the monitoring function to determine its
41 effectiveness, by a person or entity independent of the monitoring function;
42 and

- 1
2 (4) develop a written monitoring procedure to be used in monitoring both program
3 and fiscal operations.
4

5 *The provisions of this §802.85 adopted to be effective February 7, 2011, 36 TexReg 604;*
6 *amended to be effective February 24, 2014, 39 TexReg 1201*
7

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

10 **§802.86. Reporting and Resolution Requirements.**
11

- 12 (a) Boards, workforce service providers, and AEL grant recipients shall ensure that
13 monitoring reports identify instances of noncompliance with federal and state laws
14 and regulations and Agency policies, and provide recommendations for corrective
15 action and program quality enhancements.
16
17 (b) Boards, workforce service providers, and AEL grant recipients shall ensure that
18 timelines are established for the completion of corrective actions, based on the
19 severity of the deficiency, and shall work with the workforce service providers or
20 AEL service providers to ensure implementation of corrective actions.
21
22 (c) Boards, workforce service providers, and AEL grant recipients shall ensure that a
23 copy of monitoring reports is provided to Board members or AEL consortium
24 members.
25

26 *The provisions of this §802.86 adopted to be effective February 7, 2011, 36 TexReg 604;*
27 *amended to be effective February 24, 2014, 39 TexReg 1201*
28

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

31 **§802.87. Independent Audit Requirements.**

32 Boards, workforce service providers, AEL grant recipients, AEL service providers, and
33 Agency grantees are subject to the following and shall ensure that an annual audit or
34 program-specific audit is obtained in accordance with the following:

- 35 (1) Single Audit Act Amendments of 1996 (Public Law 104-156);
36
37 (2) OMB Circular A-133 and Compliance Supplement;
38
39 (3) OMB Circular A-21;
40
41 (4) OMB Circular A-110;
42
43 (5) *Government Auditing Standards* (U.S. Government Accountability Office);
44 and

- 1
2 (6) State of Texas Single Audit Circular within the Uniform Grant Management
3 Standards Act (Texas Government Code, Chapter 783).
4

5 *The provisions of this §802.87 adopted to be effective February 7, 2011, 36 TexReg 604;*
6 *amended to be effective February 24, 2014, 39 TexReg 1201*
7

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

10 **SUBCHAPTER F. PERFORMANCE AND ACCOUNTABILITY**

11
12 **§802.101. Scope and Purpose.**

- 13
14 (a) The purpose of this subchapter is to:
15
16 (1) ensure accountability of Boards, workforce service providers, AEL grant
17 recipients, AEL service providers, and Agency grantees, in meeting the needs
18 of Workforce Solutions customers;
19
20 (2) ensure performance targets are met or exceeded; and
21
22 (3) describe the Commission policies for noncompliance.
23
24 (b) The Agency may review financial, administrative, and performance data to evaluate
25 a Board, workforce service provider, AEL grant recipient, AEL service provider, or
26 Agency grantee to determine the need for sanctions.
27
28 (c) To accomplish the purposes of this subchapter, the Agency may require at any point
29 during the year that a Board, workforce service provider, AEL grant recipient, AEL
30 service provider, or Agency grantee cooperates with remedial actions, including, but
31 not limited to, entering into a technical assistance plan and other performance review
32 and assistance activities.
33

34 *The provisions of this §802.101 adopted to be effective February 7, 2011, 36 TexReg 604;*
35 *amended to be effective February 24, 2014, 39 TexReg 1201*
36

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

39 **§802.102. Performance Requirements and Expectations.**

- 40
41 (a) A Board or AEL grant recipient shall meet or exceed expenditure and performance
42 targets as set forth in its contracts. The Commission shall determine the Boards' or
43 AEL grant recipients' performance targets based on federal and state performance
44 standards and by using factors that may be necessary to achieve the mission of the
45 Commission and reflect local conditions. The Commission approves individual
46 Board or AEL grant recipient performance targets annually, which may be adjusted

1 based on local conditions including, but not limited to, specific economic conditions
2 and demographic characteristics of the workforce area.

3
4 (b) An Agency grantee shall meet or exceed expenditure and performance targets as set
5 forth in its contracts.

6
7 (c) A Board, AEL grant recipient, and Agency grantee shall comply with the following:

8
9 (1) applicable laws, regulations, provisions of contracts and Board plans, and
10 official directives and circulars including, but not limited to, DOL Training and
11 Employment Guidance Letters, DOL Training and Employment Notices, U.S.
12 Department of Health and Human Services guidance letters, U.S. Department
13 of Education Office of Vocational and Adult Education guidance, Commission
14 rules contained in Part 20 of this title, Texas Workforce Commission WD
15 Letters and AEL Letters, the Agency's Financial Manual for Grants and
16 Contracts, and other Agency guidance;

17
18 (2) appropriate uniform administrative requirements for grants and agreements
19 applicable for the type of entity receiving funds as promulgated in OMB's
20 Uniform Grant Management Standards circulars or rules; and

21
22 (3) Agency-Board agreements and applicable program contracts.

23
24 (d) A Board's or AEL grant recipient's achievement of high levels of performance may
25 result in the Commission providing incentives for the Board as set forth in
26 Subchapter I of this chapter (relating to Incentive Awards). In addition, the
27 Commission may adopt additional performance incentives.

28
29 (e) The failure of Boards, AEL grant recipients, or Agency grantees to meet minimum
30 levels of performance as referenced in their contracts may result in corrective
31 actions, other performance review and assistance activities, or sanctions as specified
32 in:

33
34 (1) Part 20 of this title, including this chapter;

35
36 (2) the contract with the Agency; or

37
38 (3) federal or state statute or rule.

39
40 (f) A Board or AEL grant recipient may submit to the Commission a request for a
41 performance target adjustment in the format prescribed by the Agency.

42
43 (g) The Commission may determine what constitutes a necessary adjustment to local
44 performance targets and may consider specific economic conditions and
45 demographic characteristics to be served in the workforce area and other factors the

1 Commission deems appropriate including the anticipated impact of the adjustment
2 on the state's performance.
3

4 *The provisions of this §802.102 adopted to be effective February 7, 2011, 36 TexReg 604;*
5 *amended to be effective February 24, 2014, 39 TexReg 1201*
6

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

9 **§802.103. Performance Review and Assistance.**
10

- 11 (a) The Commission's intent is to define the role of performance review and assistance
12 provided by the Agency. The role of performance review and assistance is to work
13 with Boards, workforce service providers, AEL grant recipients, AEL service
14 providers, and Agency grantees to:
15
16 (1) ensure successful service delivery outcomes; and
17
18 (2) provide accountability through technical assistance and contract management.
19
20 (b) The Agency offers a sequence of interventions including the development of
21 technical assistance plans, on-site reviews, staff training, and continued contract
22 management and oversight.
23
24 (c) Boards, workforce service providers, AEL grant recipients, AEL service providers,
25 and Agency grantees shall ensure cooperation and compliance with the Agency's
26 performance review and assistance activities and services.
27

28 *The provisions of this §802.103 adopted to be effective February 7, 2011, 36 TexReg 604;*
29 *amended to be effective February 24, 2014, 39 TexReg 1201*
30

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

33 **§802.104. Performance Improvement Actions.**
34

- 35 (a) The Agency may assist Boards, workforce service providers, AEL grant recipients,
36 AEL service providers, and Agency grantees with strategies for improving
37 compliance or performance.
38
39 (b) A technical assistance plan, which may be jointly developed by the Agency with
40 Boards, AEL grant recipients, or Agency grantees, may include, but is not limited to:
41
42 (1) identification of one or more specific performance improvement issues;
43
44 (2) assessment of specific technical assistance or training needs;
45

- 1 (3) selection of one or more specific technical assistance or training activities to be
2 implemented;
- 3
- 4 (4) identification of the appropriate entities to provide the technical assistance or
5 training, including the Board, AEL grant recipient, the Agency, other Boards,
6 or other entities;
- 7
- 8 (5) identification of a timeline for completion of the technical assistance or
9 training; and
- 10
- 11 (6) specific dates for reassessment of technical assistance or training needs and
12 completion of the specific technical assistance or training.
- 13

14 *The provisions of this §802.104 adopted to be effective February 7, 2011, 36 TexReg*
15 *604; amended to be effective February 24, 2014, 39 TexReg 1201*

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

18
19 **SUBCHAPTER G. CORRECTIVE ACTIONS**

20
21 **§802.121. Imposition of Corrective Actions and Corrective Action Plans.**

- 22
- 23 (a) At any time, the Agency may impose corrective actions for failure by a Board, AEL
24 grant recipient, or Agency grantee to ensure compliance with the following:
 - 25
 - 26 (1) one or more contracted performance measures;
 - 27
 - 28 (2) one or more contract provisions; or
 - 29
 - 30 (3) one or more of the items listed in §802.102(c) of this chapter.
 - 31
- 32 (b) The Agency may impose corrective actions for failure by a Board, AEL grant
33 recipient, or Agency grantee to appropriately oversee of the delivery of services and
34 ensure the effective and efficient use of funds.
- 35
- 36 (c) Failure to cooperate and comply with the Agency's performance improvement
37 actions, including technical assistance plans, may subject a Board, AEL grant
38 recipient, or Agency grantee to corrective actions.
- 39
- 40 (d) The Agency may impose, in nonsequential order, the following corrective actions on
41 a Board, AEL grant recipient, or Agency grantee:
 - 42
 - 43 (1) Intent to Sanction
 - 44
 - 45 (2) Level-One Sanction
 - 46

- 1 (3) Level-Two Sanction
2
3 (4) Level-Three Sanction
4
5 (e) The Agency may impose a higher level of sanction on a Board, AEL grant recipient,
6 or Agency grantee, if a sanction is currently imposed when another sanctionable act
7 occurs or is discovered.
8
9 (f) Corrective Action Plan. To assist in correcting any deficiencies, a Board, AEL grant
10 recipient, or Agency grantee upon whom an intent to sanction or a sanction is
11 imposed must enter into a corrective action plan. A corrective action plan is
12 developed by the Agency and may include the elements of a technical assistance
13 plan, as outlined in §802.104(b) of this chapter. In addition, the Agency may require:
14
15 (1) participation in technical and quality assurance activities;
16
17 (2) mandatory participation in training;
18
19 (3) on-site visits by the Agency to oversee and assist with daily operations of a
20 Board, AEL grant recipient, or Agency grantee;
21
22 (4) submission of additional or more detailed financial or performance reports;
23
24 (5) modification of the Board's local plan;
25
26 (6) issuing a notice of intent to revoke all or part of the affected local plan;
27
28 (7) designation as a high-risk Board, AEL grant recipient, or an Agency grantee
29 requiring additional monitoring visits;
30
31 (8) appearances by the Board's executive director, other administrative officer, the
32 Agency grantee's executive leadership, or the AEL grant recipient's chief
33 executive officer to report on activities and progress in Commission meetings
34 until performance is satisfactory;
35
36 (9) meetings with the workforce area's chief elected officials, Board chair, Board
37 members, Board executive director, AEL grant recipient's chief executive
38 officer, AEL consortium members, or Agency grantee's executive leadership;
39
40 (10) formal Agency presentation to chief elected officials, Board members, AEL
41 grant recipient's chief executive officer, AEL consortium members, or Agency
42 grantee's executive leadership;
43
44 (11) Agency oversight and management of problem situations, such as the
45 appointment of a steward;
46

- 1 (12) Agency approval of specified Board, AEL grant recipient, or Agency grantee
2 actions (i.e., prohibition against entering into specific contracts or engaging in
3 certain activities without explicit prior approval of the Agency);
4
- 5 (13) prohibition against a Board or AEL grant recipient using designated workforce
6 service providers or AEL service providers, including state agencies and
7 Workforce Solutions Office operators;
8
- 9 (14) payment by reimbursement only, with required supporting documentation;
10
- 11 (15) delay, suspension, or denial of contract payments;
12
- 13 (16) reduction or deobligation of funds;
14
- 15 (17) ineligibility for additional discretionary or other funds, including incentive
16 awards;
17
- 18 (18) contract cancellation or termination; and
19
- 20 (19) other actions deemed appropriate by the Agency to assist the Board, AEL grant
21 recipient, or Agency grantee in correcting deficiencies.
22

23 *The provisions of this §802.121 adopted to be effective February 7, 2011, 36 TexReg 604;*
24 *amended to be effective February 24, 2014, 39 TexReg 1201*
25

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

28 **§802.122. Intent to Sanction.**
29

- 30 (a) The Agency may issue an intent to sanction to set forth:
31
- 32 (1) a corrective action plan and performance review and assistance activities;
33
- 34 (2) a specific timeline for the implementation of the corrective action plan by a
35 Board, AEL grant recipient, or Agency grantee; and
36
- 37 (3) an opportunity to cure the sanctionable acts.

1
2 (b) There shall be no appeal to an intent to sanction.
3

4 *The provisions of this §802.122 adopted to be effective February 7, 2011, 36 TexReg 604;*
5 *amended to be effective February 24, 2014, 39 TexReg 1201*
6

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

9 **§802.123. Sanctions.**
10

11 (a) Level-One Sanction. The Agency may impose a level-one sanction on a Board, AEL
12 grant recipient, or Agency grantee for sanctionable acts. Sanctionable acts that occur
13 during the program, grant, fiscal, contract, or calendar year include, but are not
14 limited to, the following:
15

- 16 (1) failure to submit timely and accurate required financial or performance reports;
17
18 (2) failure to take corrective actions to resolve findings identified during
19 monitoring, investigative, or program reviews, including failure to comply
20 with a technical assistance plan developed by the Agency;
21
22 (3) failure to rectify or resolve all independent audit findings or questioned costs
23 within required time frames;
24
25 (4) failure to submit required annual audits;
26
27 (5) breach of administrative and service contract requirements;
28
29 (6) failure to retain required service delivery and financial records; or
30
31 (7) failure to meet the target on any contracted performance measure by more than
32 10 percent of target.
33

34 (b) Level-Two Sanction. The Agency may impose a level-two sanction on a Board,
35 AEL grant recipient, or Agency grantee for sanctionable acts. Sanctionable acts that
36 occur during the program, grant, fiscal, contract, or calendar year include, but are not
37 limited to, the following:
38

- 39 (1) failure to rectify a level-one sanction within six months of notice;
40
41 (2) committing a second sanctionable act;
42
43 (3) failure to rectify reported threats to health and safety of program participants
44 within 30 days of notice. Rectifying health and safety may include
45 investigating a complaint, taking appropriate corrective actions, or making
46 referrals to appropriate authorities; or

1
2 (4) failure to meet the target on any contracted performance measure by more than
3 25 percent of target.

4
5 (c) Level-Three Sanction. The Agency may impose a level-three sanction on a Board,
6 AEL grant recipient, or Agency grantee for sanctionable acts. Sanctionable acts that
7 occur during the program, grant, fiscal, contract, or calendar year include, but are not
8 limited to, the following:

9
10 (1) failure to rectify a level-one sanction within one year of notice;

11
12 (2) failure to rectify a level-two sanction within six months of notice;

13
14 (3) committing multiple sanctionable acts;

15
16 (4) failure to rectify reported threats to health and safety of program participants
17 within 60 days of notice. Rectifying health and safety may include
18 investigating a complaint, taking appropriate corrective action, or making
19 referrals to appropriate authorities; or

20
21 (5) failure to meet the target on any contracted measure by more than 25 percent
22 of target for two consecutive years.

23
24 *The provisions of this §802.123 adopted to be effective February 7, 2011, 36 TexReg 604;*
25 *amended to be effective February 24, 2014, 39 TexReg 1201*

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

28
29 **§802.124. Penalties for Noncompliance with Requirements.**

30
31 (a) The Agency may impose penalties on a Board, AEL grant recipient, or Agency
32 grantee based on the following criteria as determined appropriate by the Agency
33 given the totality of the circumstances surrounding the occurrence of the
34 sanctionable act or acts:

35
36 (1) Severity, nature, duration, and extent;

37
38 (2) Previous occurrences of sanctionable acts; and

39
40 (3) Efforts by the Board, workforce service provider, AEL grant recipient, AEL
41 service provider, or Agency grantee to prevent the occurrence of the
42 sanctionable act, including efforts to:

43
44 (A) obtain technical assistance, training, or other assistance from the Agency;

45
46 (B) resolve monitoring findings; and

1
2 (C) prevent potential sanctionable acts.
3

- 4 (b) The Agency may impose penalties for sanctionable acts listed in this subchapter.
5 Notwithstanding the list of sanctionable acts appearing after each specific level of
6 sanction in §802.123 of this subchapter, the Agency may assign a higher or lower
7 sanction level based on the severity or mitigating circumstances surrounding the
8 sanctionable acts.
9
- 10 (c) The Commission may recommend to TWIC pursuant to Texas Government Code,
11 Chapter 2308, that one or more of the following be imposed on Boards:
12
- 13 (1) A reorganization plan under Texas Government Code §2308.268 for the
14 workforce area;
 - 15
 - 16 (2) A restructuring of the Board, including decertification of the current Board and
17 appointment and certification of a new Board;
 - 18
 - 19 (3) A merger of the workforce area into one or more other workforce areas; or
20
 - 21 (4) Any other penalty deemed appropriate by the Commission.
22
- 23 (d) More than one corrective action may be imposed in response to one occurrence of a
24 sanctionable act. The corrective actions imposed for one or more occurrences of
25 sanctionable acts may correlate with the sanction level imposed on a Board, AEL
26 grant recipient, or Agency grantee.
27
- 28 (e) Failure by a Board, AEL grant recipient, or Agency grantee to complete the
29 corrective actions described in this subchapter within the specified time limits may
30 result in the Agency imposing penalties under this subchapter and withholding
31 contract payments to the Board, AEL grant recipient, or Agency grantee.
32
- 33 (f) Penalties for Second-Year WIA Nonperformance. If a Board fails to meet its targets
34 on 25 percent of its contracted measures by more than 20 percent of target for two
35 consecutive program years, the Commission shall review the performance
36 deficiencies and shall make a recommendation to TWIC that it impose a
37 reorganization plan for the workforce area. The Commission's recommendation to
38 TWIC for reorganization of a workforce area may include one or more of the
39 corrective actions or penalties included in this subchapter. Notwithstanding this
40 subsection, the Commission may take other action deemed appropriate as consistent
41 with federal law.
42
- 43 (g) Penalties for Failures Regarding the One-Stop Service Delivery Network. Failure of
44 a Board to ensure the continued operation of a one-stop service delivery network as
45 required by WIA §121 and Chapter 801, Subchapter B, One-Stop Service Delivery
46 Network of this title, including failure to properly certify Workforce Solutions

1 Offices as defined in §801.24 of this title, may result in the imposition of penalties as
2 provided in this subchapter, and the Agency's withholding of payment for any
3 administrative expenses until the Board demonstrates to the satisfaction of the
4 Agency that all of the required elements of a one-stop service delivery network are
5 operational.
6

7 *The provisions of this §802.124 adopted to be effective February 7, 2011, 36 TexReg 604;*
8 *amended to be effective February 24, 2014, 39 TexReg 1201*
9

10 [Return to Table of Contents](#)

11
12 **§802.125. Sanction Determination.**

- 13
14 (a) The director of Agency's Workforce Development Division determines whether a
15 sanction shall be imposed, including whether it is appropriate to impose a sanction
16 level on the Board, AEL grant recipient, or Agency grantee and whether it is
17 appropriate to assign a penalty.
18
19 (b) The Commission shall work in concert with TWIC, as appropriate, to impose
20 sanctions as required by Texas Government Code §2308.268 and §2308.269.
21
22 (c) The Agency shall send a written notice of sanction determination (sanction
23 determination) to the following:
24
25 (1) Board:
26
27 (A) The Board's executive director or administrative officer;
28
29 (B) The Board's chair; and
30
31 (C) The lead chief elected official of the workforce area; or
32
33 (2) The AEL grant recipients' or Agency grantees' executive leadership.
34
35 (d) The sanction determination date of notice shall be the date the sanction
36 determination is sent by certified mail. All sanction determinations shall be sent by
37 electronic transmission and by certified mail, return receipt requested.
38
39 (e) The sanction determination shall include the following information:
40
41 (1) the sanctionable act upon which the sanction was based;
42
43 (2) the sanction level in which the Board, AEL grant recipient, or Agency grantee
44 is placed and the conditions under which the sanction may be removed;
45
46 (3) the penalty and the effective date of the penalty;

- 1
2 (4) the corrective action required, including the timeline for completing the
3 corrective action; and
4
5 (5) the technical assistance contact from the Agency or other entity to assist in
6 completing the corrective action.
7
8 (f) The Agency shall send the sanction determination at least 10 working days in
9 advance of the effective date of the sanction.

10
11 *The provisions of this §802.125 adopted to be effective February 7, 2011, 36 TexReg 604;*
12 *amended to be effective February 24, 2014, 39 TexReg 1201*

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

15
16 **SUBCHAPTER H. REMEDIES**

17
18 **§802.141. Informal Conferences and Informal Dispositions.**

19
20 An informal conference is defined as an informal meeting between a Board or Agency
21 grantee and designee of the director of the Agency's Workforce Development Division,
22 held for the purpose of agreeing on a proposed informal disposition of a sanctionable act.
23 An informal conference shall be voluntary and shall not be a prerequisite to a hearing in
24 an appeal of a penalty.
25

26 *The provisions of this §802.141 adopted to be effective February 7, 2011, 36 TexReg 604*

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

29
30 **§802.142. Appeal.**

- 31
32 (a) A Board or Agency grantee may appeal a final determination or sanction
33 determination; however, a recommendation to another entity by the Agency or
34 Commission under Subchapter G of this chapter (relating to Corrective Actions),
35 cannot be appealed.
36
37 (b) A request for appeal of a final determination or sanction determination shall be filed
38 within 10 working days following the receipt of the determination. The appeal shall
39 be in writing and filed with the General Counsel, Texas Workforce Commission, 101
40 East 15th Street, Austin, Texas 78778. Failure by a Board, workforce service
41 provider, or Agency grantee to timely request a hearing waives the right to a hearing.
42
43 (c) The Agency shall refer the request for appeal to an impartial hearing officer for a
44 hearing.
45

1 (d) The Agency shall mail a notice of hearing to the Board or Agency grantee as
2 provided in §802.125(c) of this chapter, and to their representatives, if any. The
3 notice of hearing shall be in writing and include:

- 4
5 (1) a statement of the date, time, place, and nature of the hearing;
6
7 (2) a statement of the legal authority under which the hearing is to be held; and
8
9 (3) a short and plain statement of the issues to be considered during the hearing.

10
11 *The provisions of this §802.142 adopted to be effective February 7, 2011, 36 TexReg 604*

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

14
15 **§802.143. Hearing Procedures.**

- 16
17 (a) The sanction determination hearing shall be conducted in person in Austin, Texas,
18 unless the parties agree to a telephonic hearing or request a different location.
19
20 (b) The hearing shall be conducted informally and in such manner as to ascertain the
21 substantial rights of the parties. All issues relevant to the appeal shall be considered
22 and addressed, and may include:
23
24 (1) Presentation of Evidence. The parties to an appeal may present evidence that
25 is material and relevant, as determined by the hearing officer. In conducting a
26 hearing, the hearing officer shall actively develop the record on the relevant
27 circumstances and facts to resolve all issues. To be considered as evidence in a
28 decision, any document or physical evidence must be entered as an exhibit at
29 the hearing.
30
31 (2) Examination of Parties and Witnesses. The hearing officer shall examine
32 parties and any witnesses, and shall allow cross-examination to the extent the
33 hearing officer deems necessary to afford the parties due process.
34
35 (3) Additional Evidence. The hearing officer, with or without notice to any of the
36 parties, may take additional evidence as deemed necessary, provided that a
37 party shall be given an opportunity to rebut the evidence if it is to be used
38 against the party's interest.
39
40 (4) Appropriate Hearing Behavior. All parties shall conduct themselves in an
41 appropriate manner. The hearing officer may expel any individual, including a
42 party, who fails to correct behavior the hearing officer identifies as disruptive.
43 After expulsion, the hearing officer may proceed with the hearing and render a
44 decision.
45
46 (c) Records.

- 1
2 (1) The hearing record shall include the audio recording of the proceeding and any
3 other relevant evidence relied on by the hearing officer, including documents
4 and other physical evidence entered as exhibits.
5
6 (2) The hearing record shall be maintained in accordance with federal and state
7 law.
8
9 (3) Confidentiality of information contained in the hearing record shall be
10 maintained in accordance with federal and state law.
11

12 *The provisions of this §802.143 adopted to be effective February 7, 2011, 36 TexReg 604*

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

15
16 **§802.144. Postponements, Continuances, and Withdrawals.**

- 17
18 (a) The hearing officer may grant a postponement of a sanction determination hearing
19 for good cause at a party's request.
20
21 (b) A continuance of a hearing may be ordered at the discretion of the hearing officer to
22 consider additional, necessary evidence or for any other reason the hearing officer
23 deems appropriate.
24
25 (c) A Board or Agency grantee may withdraw an appeal at any time prior to the issuance
26 of the final decision.
27

28 *The provisions of this §802.144 adopted to be effective February 7, 2011, 36 TexReg 604*

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

31
32 **§802.145. Evidence.**

- 33
34 (a) Evidence Generally. Evidence, including hearsay evidence, shall be admitted if it is
35 relevant and if in the judgment of the hearing officer it is the kind of evidence on
36 which reasonably prudent persons are accustomed to rely in the conduct of their
37 affairs. However, the hearing officer may exclude evidence if its probative value is
38 outweighed by the danger of unfair prejudice, by confusion of the issues, or by
39 reasonable concern for undue delay, waste of time, or needless presentation of
40 cumulative evidence.
41
42 (b) Exchange of Exhibits. Any documentary evidence to be presented during a
43 telephonic hearing shall be exchanged with all parties and a copy shall be provided
44 to the hearing officer in advance of the hearing. Any documentary evidence to be
45 presented at an in-person hearing shall be exchanged at the hearing.
46

1 (c) Stipulations. The parties, with the consent of the hearing officer, may agree in
2 writing to relevant facts. The hearing officer may decide the appeal based on such
3 stipulations or, at the hearing officer's discretion, may set the appeal for hearing and
4 take such further evidence as the hearing officer deems necessary.
5

6 (d) Experts and Evaluations. If relevant and useful, testimony from an independent
7 expert or a professional evaluation from a source satisfactory to the parties and the
8 Agency may be ordered by hearing officers, on their own motion, or at a party's
9 request. Any such expert or evaluation shall be at the expense of one or more of the
10 parties.
11

12 (e) Subpoenas.
13

14 (1) The hearing officer may issue subpoenas to compel the attendance of witnesses
15 and the production of records. A subpoena may be issued either at the request
16 of a party or on the hearing officer's own motion.
17

18 (2) A party requesting a subpoena shall state the nature of the information desired,
19 including names of any witnesses and the records that the requestor feels are
20 necessary for the proper presentation of the case.
21

22 (3) The request shall be granted only to the extent the records or the testimony of
23 the requested witnesses appears to be relevant to the issues on appeal.
24

25 (4) A denial of a subpoena request shall be made in writing or on the record,
26 stating the reasons for such denial.
27

28 *The provisions of this §802.145 adopted to be effective February 7, 2011, 36 TexReg 604*
29

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

32 **§802.146. Hearing Officer Independence and Impartiality.**
33

34 (a) A hearing officer presiding over a hearing shall have all powers necessary and
35 appropriate to conduct a full, fair, and impartial hearing. Hearing officers shall
36 remain independent and impartial in all matters regarding the handling of any issues
37 during the pendency of a case and in issuing their written proposals for decision.
38

39 (b) A hearing officer shall be disqualified if the hearing officer has a personal interest in
40 the outcome of the appeal or if the hearing officer directly or indirectly participated
41 in the determination on appeal. Any party may present facts to the Agency in
42 support of a request to disqualify a hearing officer.
43

44 (c) The hearing officer may withdraw from a hearing to avoid the appearance of
45 impropriety or partiality.

- 1
2 (d) Following any disqualification or withdrawal of a hearing officer, the Agency shall
3 assign an alternate hearing officer to the case. The alternate hearing officer shall not
4 be bound by any findings or conclusions made by the disqualified or withdrawn
5 hearing officer.
6

7 *The provisions of this §802.146 adopted to be effective February 7, 2011, 36 TexReg 604*
8

9 [Return to Table of Contents](#)
10

11 **§802.147. Ex Parte Communications.**
12

- 13 (a) The hearing officer shall not participate in ex parte communications, directly or
14 indirectly, in any matter in connection with any substantive issue, with any interested
15 person or party. Likewise, no person shall attempt to engage in ex parte
16 communications with the hearing officer on behalf of any interested person or party.
17
18 (b) If the hearing officer receives any such ex parte communication, the other parties
19 shall be given an opportunity to review any such ex parte communication.
20
21 (c) Nothing shall prevent the hearing officer from communicating with parties or their
22 representatives about routine matters such as requests for continuances or
23 opportunities to inspect the file.
24
25 (d) The hearing officer may initiate communications with an impartial Agency
26 employee who has not participated in a hearing or any determination in the case for
27 the limited purpose of using the special skills or knowledge of the Agency and its
28 staff in evaluating the evidence.
29

30 *The provisions of this §802.147 adopted to be effective February 7, 2011, 36 TexReg 604*
31

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

34 **§802.148. Hearing Decision.**
35

- 36 (a) Following the conclusion of the hearing, the hearing officer shall promptly prepare a
37 written proposal for decision.
38
39 (b) The proposal for decision shall be based exclusively on the evidence of record in the
40 hearing and on matters officially noticed in the hearing. The decision shall include:
41
42 (1) a list of the individuals who appeared at the hearing;
43
44 (2) the findings of fact and conclusions of law reached on the issues; and
45
46 (3) the affirmation, reversal, or modification of the sanctions.

- 1
2 (c) The proposal for decision shall be submitted to the Agency's executive director for
3 issuance of a written decision on behalf of the Agency.
4
5 (d) Unless a party files a timely motion for rehearing, the Agency may assume
6 continuing jurisdiction to modify or correct a decision until the expiration of 30
7 calendar days from the mailing date of the decision.
8

9 *The provisions of this §802.148 adopted to be effective February 7, 2011, 36 TexReg 604*

10
11 [Return to Table of Contents](#)
12

13 **§802.149. Motion for Reopening.**
14

- 15 (a) If a party does not appear for a hearing, the party may request a reopening of the
16 hearing within 30 calendar days from the date the decision is mailed.
17
18 (b) The motion for reopening shall be in writing and detail the reason for failing to
19 appear at the hearing.
20
21 (c) The hearing officer may schedule a hearing on whether to grant the reopening.
22
23 (d) The motion may be granted if the hearing officer determines that the party has
24 shown good cause for failing to appear at the hearing.
25

26 *The provisions of this §802.149 adopted to be effective February 7, 2011, 36 TexReg 604*
27

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

30 **§802.150. Motion for Rehearing.**
31

- 32 (a) A Board or Agency grantee may file a motion for rehearing for the presentation of
33 new evidence within 30 days from the date the decision is mailed. A rehearing shall
34 be granted only for the presentation of new evidence.
35
36 (b) A motion for rehearing shall be in writing and allege the new evidence to be
37 considered.
38
39 (c) If the hearing officer determines that the alleged new evidence warrants a rehearing,
40 a rehearing shall be scheduled at a reasonable time and place.
41
42 (d) The hearing officer shall issue a written proposal for decision in response to a timely
43 filed motion for rehearing. The proposal for decision shall be submitted to the
44 Agency's executive director for issuance of a final decision.

1
2 *The provisions of this §802.150 adopted to be effective February 7, 2011, 36 TexReg 604*

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

5
6 **§802.151. Finality of Decision.**

- 7
8 (a) The decision of the executive director is the final administrative decision of the
9 Agency after the expiration of 30 calendar days from the mailing date of the
10 decision, unless within that time:
11
12 (1) a request for reopening is filed with the Agency;
13
14 (2) a request for rehearing is filed with the Agency; or
15
16 (3) the Agency assumes continuing jurisdiction to modify or correct the decision.
17
18 (b) Any decision issued in response to a request for reopening or rehearing or a
19 modification or correction issued by the Agency shall be final on the expiration of 30
20 calendar days from the mailing date of the decision, modification, or correction.
21

22 *The provisions of this §802.151 adopted to be effective February 7, 2011, 36 TexReg 604*

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

25
26 **§802.152. Repayment.**

- 27
28 (a) The Board and chief elected officials shall be jointly and severally liable for
29 repayment to the Agency from nonfederal funds for expenditures in the workforce
30 area that are found by the Agency not to have been expended in accordance
31 §802.102 of this chapter.
32
33 (b) An Agency grantee shall be liable for repayment to the Agency from nonfederal
34 funds for expenditures that are found by the Agency not to have been expended in
35 accordance with §802.102 of this chapter.
36

37 *The provisions of this §802.152 adopted to be effective February 7, 2011, 36 TexReg 604*

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

40
41 **SUBCHAPTER I. WORKFORCE AWARDS**

42
43 **§802.161. Scope and Purpose.**

44
45 The purpose of the workforce awards is to allow the Agency's three-member Commission
46 (Commission) to establish monetary and nonmonetary awards to encourage innovation

1 and to recognize and reward Local Workforce Development Boards (Boards), Adult
2 Education and Literacy (AEL) grant recipients, and other Texas workforce system
3 partners for exceptional performance in carrying out the workforce system's obligation to
4 help Texas employers, employees, job seekers, and students succeed economically.
5

6 *The provisions of this §802.161 adopted to be effective February 7, 2011, 36 TexReg 604;*
7 *amended to be effective February 24, 2014, 39 TexReg 1201; amended to be effective*
8 *December 21, 2020, 45 TexReg 9245*
9

10 [Return to Table of Contents](#)

11
12 **§802.162. Definitions.**

13
14 The following words and terms when used in this chapter shall have the following
15 meanings, unless the context clearly indicates otherwise.
16

- 17 (1) Allocation of Funds--The total yearly funds initially identified for allocation to
18 a local development workforce area (workforce area) for all programs. This
19 does not include consideration of adjustments in funding that the Commission
20 made to specific programs for the purposes of reallocating or redistributing
21 those funds. This may include new allocations or distributions that result from
22 changes in law or new funding made available to the workforce areas during
23 the year.
24
- 25 (2) Classification--A grouping of Boards, AEL grant recipients, or other
26 workforce system partners with one or more common characteristics (for
27 example, size) for the purpose of evaluating performance and issuing
28 incentive, quality-improvement, or other awards, as determined by the
29 Commission.
30
- 31 (3) Extraordinary Circumstances--Conditions that may have an impact on the
32 determination of which Boards, AEL grant recipients, or other workforce
33 system partners may receive, or be excluded from receiving, workforce
34 awards, which may include, but are not limited to, matters such as serious
35 unforeseen events, unresolved audit or monitoring findings, sanctions,
36 unanticipated changes in economic conditions, disasters, legislative changes, or
37 other occurrences directly impacting the Commission, Boards, AEL grant
38 recipients, or the Texas workforce system.
39
- 40 (4) Workforce Awards--Awards presented by the Commission to workforce
41 system partners within the parameters of this subchapter to support activities
42 allowable under programmatic funding sources.
43
- 44 (5) Workforce System Partner--For the purposes of workforce awards, any entity
45 that provides workforce services to workforce system customers.
46

1 *The provisions of this §802.162 adopted to be effective February 7, 2011, 36 TexReg 604;*
2 *amended to be effective February 24, 2014, 39 TexReg 1201; amended to be effective*
3 *December 21, 2020, 45 TexReg 9245*

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

6
7 **§802.163. Types of Workforce Awards.**

8
9 The Commission shall determine:

- 10
11 (1) awards to be issued, including award categories and names;
12
13 (2) monetary amounts, if any, for each award in accordance with the funding
14 source's allowability for such purposes;
15
16 (3) the number of awards to be presented for each category;
17
18 (4) the basis for award criteria, such as performance data, an application, a
19 nomination, any combination thereof, or any other criteria;
20
21 (5) the classification, if any, of workforce system award recipients for comparison
22 purposes;
23
24 (6) the method by which each award will be evaluated; and
25
26 (7) other criteria as determined by the Commission.

27
28 *The provisions of this §802.163 adopted to be effective February 7, 2011, 36 TexReg 604;*
29 *amended to be effective December 21, 2020, 45 TexReg 9245*

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

32
33 **§802.165. Workforce Award Recipient Classification.**

- 34
35 (a) The Commission may group workforce system partners, including, but not limited
36 to, Boards and AEL grant recipients, in classifications for comparison purposes to
37 determine workforce award recipients.
38
39 (b) In classifying potential workforce award recipients, the Commission may group
40 potential award recipients based on similarities or differences among the potential
41 award recipients relating to:
42
43 (1) allocations of funds;
44
45 (2) prior performance;
46

- (3) demographic, economic, or other characteristics of the individual workforce areas or service-delivery areas;
- (4) size; or
- (5) other characteristics as determined by the Commission.

The provisions of this §802.165 adopted to be effective February 7, 2011, 36 TexReg 604; amended to be effective December 21, 2020, 45 TexReg 9245

[Return to Table of Contents](#)

§802.166. Notification.

- (a) The Agency shall notify Boards, AEL grant recipients, and other workforce system partners, as applicable, of the current year's awards classifications, criteria, deadlines, and methods by which awards information may be submitted to the Agency for consideration.
- (b) The notice required under this section shall be provided by the end of the calendar year preceding the presentation of awards.
- (c) The Commission may add, modify, or remove an award or award type after the notification deadline when necessary due to extraordinary circumstances. Where the Commission takes such action, the Agency shall promptly notify Boards, AEL grant recipients, and other workforce system partners, as applicable, of the action taken and any changes to the previously noticed awards.

The provisions of this §802.166 adopted to be effective February 7, 2011, 36 TexReg 604; amended to be effective December 21, 2020, 45 TexReg 9245

[Return to Table of Contents](#)

§802.167. Extraordinary Circumstances.

Under extraordinary circumstances, as defined in this subchapter, the Commission may modify eligibility for and assignment of awards as necessary based on factors that the Commission identifies.

The provisions of this §802.167 adopted to be effective February 7, 2011, 36 TexReg 604; amended to be effective December 21, 2020, 45 TexReg 9245

[Return to Table of Contents](#)

SUBCHAPTER J. LOCAL WORKFORCE DEVELOPMENT AREA APPEALS

1 **§802.170. Appeal of Denial of Local Workforce Development Area Certification.**

2
3 All appeals of denial of local workforce development area certifications shall be referred
4 to the Texas Workforce Investment Council as described in the Agency's WIOA
5 Combined State Plan.

6
7 *The provisions of this §802.170 adopted to be effective January 4, 2021, 46 TexReg 195*

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

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