

1 **CHAPTER 800. GENERAL ADMINISTRATION**

2
3 **PROPOSED RULES TO BE PUBLISHED IN THE *TEXAS REGISTER*. THIS**
4 **DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT TO**
5 **FORMATTING CHANGES AS REQUIRED BY THE OFFICE OF THE SECRETARY**
6 **OF STATE.**

7
8 The Texas Workforce Commission (TWC) proposes amendments to the following sections of
9 Chapter 800, relating to General Administration:

10
11 Subchapter B. Allocations, §§800.52, 800.71, 800.78, and 800.80

12
13 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

14 The purpose of the proposed Chapter 800 amendment is to provide TWC's three-member
15 Commission (Commission) flexibility when deobligating Adult Education and Literacy (AEL)
16 statewide funds and considering an AEL grant recipient's performance when reallocating
17 deobligated funds.

18
19 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

20 (Note: Minor editorial changes are made that do not change the meaning of the rules and,
21 therefore, are not discussed in the Explanation of Individual Provisions.)

22
23 **SUBCHAPTER B. ALLOCATIONS**

24 TWC proposes the following amendments to Subchapter B:

25
26 **§800.52. Definitions.**

27 Section 800.52(5), the definition for "Deobligation," is amended to add §800.78 and §800.79 to
28 the rule reference.

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30 **§800.71. General Deobligation and Reallocation Provisions**

31 Section 800.71(b) is amended to add §§800.78 - 800.80 to the rule reference.

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33 **§800.78. Midyear Deobligation of AEL Funds**

34 Section 800.78 is amended to rename the section "Deobligation of AEL Funds."

35
36 Section 800.78(a) is amended to update the reference to §800.78(d). Section 800.78(d) is
37 proposed for deletion and the reference is updated to §800.80(a), which contains similar
38 language to the language that is proposed for deletion.

39
40 Section 800.78(a)(1) amends the time in which TWC may review expenditures for deobligation
41 from months four to seven, to any month after month four.

42
43 Section 800.78(d), which provides that amounts deobligated from an AEL grant recipient must
44 be made available as a first priority to another grant recipient providing AEL services in the
45 same workforce area, is deleted. The subsequent subsection is relettered accordingly.

1 **§800.80. Reallocation of AEL Funds**

2 Section 800.80 is amended to modify the criteria a grant recipient must meet in order to receive
3 deobligated funds and revise language related to the reallocation of funds.

4
5 New §800.80(a)(7) is added to require a grant recipient to be meeting performance for the
6 program year to receive deobligated funds.

7
8 Section 800.80(b) is amended to clarify that the Commission must approve any plan to reallocate
9 deobligated funds. Section 800.80(b) also is amended to add that the Commission may make
10 those funds as a first priority to other grant recipients within the same workforce area meeting
11 the criteria in §800.80(a). Existing language provides that the Commission must approve an
12 acceptable plan to reallocate funds to a grant recipient within the workforce area; and the new
13 language provides that grant recipients outside the workforce area may be considered by the
14 Commission, provided that requirements in §800.80(a) are met. Section 800.80(b) also is
15 amended to add that if AEL grant recipients outside the workforce area are not able to meet the
16 criteria in §800.80(a), then TWC staff will present an alternate plan for the Commission's
17 consideration.

18
19 **PART III. IMPACT STATEMENTS**

20 Chris Nelson, Chief Financial Officer, determined that for each year of the first five years the
21 rules will be in effect, the following statements will apply:

22
23 There are no additional estimated costs to the state and to local governments expected as a result
24 of enforcing or administering the rules.

25
26 There are no estimated cost reductions to the state and to local governments as a result of
27 enforcing or administering the rules.

28
29 There are no estimated losses or increases in revenue to the state or to local governments as a
30 result of enforcing or administering the rules.

31
32 There are no foreseeable implications relating to costs or revenue of the state or local
33 governments as a result of enforcing or administering the rules.

34
35 There are no anticipated economic costs to individuals required to comply with the rules.

36
37 There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural
38 communities as a result of enforcing or administering the rules.

39
40 Based on the analyses required by Texas Government Code, §2001.024, TWC determined that
41 the requirement to repeal or amend a rule, as required by Texas Government Code, §2001.0045,
42 does not apply to this rulemaking.

43
44 **Takings Impact Assessment**

45 Under Texas Government Code, §2007.002(5), "taking" means a governmental action that
46 affects private real property, in whole or in part or temporarily or permanently, in a manner that

1 requires the governmental entity to compensate the private real property owner as provided by
2 the Fifth and Fourteenth Amendments to the United States Constitution or the Texas
3 Constitution, Article I, §17 or §19, or restricts or limits the owner's right to the property that
4 would otherwise exist in the absence of the governmental action, and is the producing cause of a
5 reduction of at least 25 percent in the market value of the affected private real property,
6 determined by comparing the market value of the property as if the governmental action is not in
7 effect and the market value of the property determined as if the governmental action is in effect.
8 TWC completed a Takings Impact Analysis for the proposed rulemaking action under Texas
9 Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as
10 discussed elsewhere in this preamble, is to provide the Commission flexibility when deobligating
11 AEL statewide funds and to consider an AEL grant recipient's performance when reallocating
12 deobligated funds.

13
14 The proposed rulemaking action will not create any additional burden on private real property or
15 affect private real property in a manner that would require compensation to private real property
16 owners under the United States Constitution or the Texas Constitution. The proposal also will
17 not affect private real property in a manner that restricts or limits an owner's right to the property
18 that would otherwise exist in the absence of the governmental action. Therefore, the proposed
19 rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

20
21 Government Growth Impact Statement

22 TWC determined that during the first five years the rules will be in effect, they:

- 23 --will not create or eliminate a government program;
- 24 --will not require the creation or elimination of employee positions;
- 25 --will not require an increase or decrease in future legislative appropriations to TWC;
- 26 --will not require an increase or decrease in fees paid to TWC;
- 27 --will not create a new regulation;
- 28 --will not expand, limit, or eliminate an existing regulation;
- 29 --will not change the number of individuals subject to the rules; and
- 30 -- will not positively or adversely affect the state's economy.

31
32 Economic Impact Statement and Regulatory Flexibility Analysis

33 TWC determined that the rules will not have an adverse economic impact on small businesses or
34 rural communities, as the proposed rules place no requirements on small businesses or rural
35 communities.

36
37 Mariana Vega, Director, Labor Market Information, determined that there is not a significant
38 negative impact upon employment conditions in the state as a result of the rules.

39
40 Courtney Arbour, Director, Workforce Development Division, determined that for each year of
41 the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the
42 proposed rules will be to grant the Commission flexibility when reallocating deobligated AEL
43 funds, and to ensure such funds are reallocated efficiently within the state.

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

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PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, TWC sought the involvement of Texas' 28 Local Workforce Development Boards (Boards). TWC provided the policy concept regarding these rule amendments to the Boards for consideration and review on March 22, 2022. TWC also conducted a conference call with AEL Grant Recipients on March 24, 2022, and then with Board executive directors and Board staff on March 25, 2022, to discuss the policy concept. During the rulemaking process, TWC considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

PART V. PUBLIC COMMENTS

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov and must be received no later than August 22, 2022.

PART VI. STATUTORY AUTHORITY

The rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules implement the requirements set out in Workforce Innovation and Opportunity Act Title II and Texas Labor Code, Chapter 315.

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- (7) Hold Harmless/Stop Gain--A procedure that assures that a relative proportion of an allocation to a workforce area is not below 90 percent of the corresponding proportion for the past two years, or that the current year proportion is not above 125 percent of the prior two-year relative proportion.
 - (8) Monthly expenditure report--A written or electronically submitted report by a Board or an AEL grant recipient that contains information regarding services for each category of funding allocated by the Commission, and in which the Board or an AEL grant recipient lists expenditures and obligations by category of funding.
 - (9) Obligation--A debt established by a legally binding contract, letter of agreement, sub-grant award, or purchase order, which has been executed prior to the end of a contract period, for goods and services provided by the end of the contract period, and which will be liquidated 60 calendar days after the end of a contract period, unless such definition is ~~superseded~~ ~~supereeded~~ by federal requirements.
 - (10) Relative proportion of the program year--The corresponding part of the program year that is used to compare expenditures. That is, if 50 percent of the program year has transpired, then the relative proportion of the program year is 50 percent.
 - (11) WIA Formula Allocated Funds--Funds allocated by formula to workforce areas for each of the following separate categories of funding: WIA Adult, Dislocated Worker, and Youth.

29 **§800.71. General Deobligation and Reallocation Provisions.**

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- (a) Purpose. The purpose of this rule is to promote effective service delivery, financial planning, and management to ensure full utilization of funding, and to reallocate funds to populations in need.
 - (b) Scope. Sections 800.71 - ~~800.80~~~~800.77~~ of this subchapter shall apply to funds provided to workforce areas under a contract between the Board or an AEL grant recipient and the Commission for the following categories of funding:
 - (1) Adult Education and Literacy
 - (2) Child Care
 - (3) Choices
 - (4) Employment Service

- 1 (5) SNAP E&T
- 2
- 3 (6) Project RIO
- 4
- 5 (7) WIA Alternative Funding for Statewide Activities
- 6
- 7 (8) WIA Alternative Funding for One-Stop Enhancements
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9 **§800.78. Midyear Deobligation of AEL Funds.**

- 10
- 11 (a) The Commission may deobligate funds from an AEL grant recipient during the
- 12 program year if an AEL grant recipient is not meeting the expenditure thresholds set
- 13 forth in subsection (b) of this section, provided, however, that the requirements of
- 14 [§800.80\(a\) of this subchapter](#)~~subsection (d) of this section~~ are satisfied.
- 15
- 16 (1) AEL grant recipients that fail to meet the expenditure thresholds set forth in
- 17 subsection (b) of this section at the end of ~~month~~~~months~~ four, ~~five, six, or~~
- 18 ~~seven~~ (October, ~~November, December, or January~~), or any month thereafter,
- 19 will be reviewed to determine the causes for the under expenditure of funds,
- 20 except as set forth in subsection ~~(d)~~~~(e)~~ of this section.
- 21
- 22 (2) The Commission shall not deobligate more than the difference between an
- 23 AEL grant recipient's actual expenditures and the amount corresponding to the
- 24 relative proportion of the program year.
- 25
- 26 (3) The Commission shall not deobligate funds from an AEL grant recipient that
- 27 failed to meet the expenditure thresholds set forth in subsection (b) of this
- 28 section, if within 60 days prior to the potential deobligation period the
- 29 Commission executes a contract amendment for a supplemental allocation or
- 30 reallocation of funds in the same program funding category.
- 31
- 32 (b) The Commission may deobligate funds from an AEL grant recipient midyear, as set
- 33 forth in subsection (a) of this section, if an AEL grant recipient fails to achieve the
- 34 expenditure of an amount corresponding to 90 percent or more of the relative
- 35 proportion of the program year.
- 36
- 37 (c) An AEL grant recipient subject to deobligation for failure to meet the requirements
- 38 set forth in this section shall, upon request by the Commission, submit a written
- 39 justification. For an AEL consortium, a copy must be provided to all AEL
- 40 consortium members. The written justification shall provide sufficient detail
- 41 regarding the actions an AEL grant recipient will take to address its deficiencies,
- 42 including:
- 43
- 44 (1) expansion of services proportionate to the available resources;
- 45
- 46 (2) projected service levels and related performance;

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2 (3) reporting outstanding obligations; and
3
4 (4) any other factors an AEL grant recipient would like the Commission to
5 consider.
6

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

11
12 ~~(d)~~(e) To the extent this section may be found not to comply with federal requirements,
13 or should any related federal waivers expire, the Commission will be subject to
14 federal requirements in effect, as applicable.
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16 §800.80. Reallocation of AEL Funds.

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18 (a) For an AEL grant recipient to be eligible to receive deobligated AEL funds, the
19 Commission may consider whether the AEL grant recipient:

- 20
21 (1) has met targeted expenditure levels as required by §800.78(a) ~~and~~- (b) of this
22 subchapter, as applicable, for that period;
23
24 (2) has not expended or obligated more than 100 percent of the workforce area's
25 allocation for the category of funding;
26
27 (3) has demonstrated that expenditures conform to cost category limits for
28 funding;
29
30 (4) has demonstrated the need for and ability to use additional funds;
31
32 (5) is current on expenditure reporting;
33
34 (6) is current with all single audit requirements; ~~and~~

35
36 (7) is meeting performance for the program year; and

37
38 (8)~~(7)~~ is not under sanction.

39
40 (b) The Commission must approve any plan to reallocate funds~~Any amounts~~
41 ~~deobligated or voluntarily deobligated from an AEL grant recipients. The~~
42 Commission may make such funds~~recipient shall be made~~ available as a first priority
43 to any other AEL grant recipients providing AEL services within the same workforce
44 area meeting~~that meet~~ the requirements of subsection (a) of this section, upon receipt
45 and approval by the Commission of an acceptable plan. Following the determination
46 that any such plan has not been determined to be acceptable, the Commission may

1 consider ~~an~~AEL grant recipients outside the workforce area~~recipient~~ satisfying the
2 requirements of subsection (a) of this section, upon receipt and approval by the
3 Commission of an acceptable plan. In the event AEL grant recipients outside the
4 workforce area are not able to meet the requirements of subsection (a) of this section,
5 Agency staff will present an alternate plan for Commission consideration.