

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 SECRETARY OF**
6 **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, §800.68
12 Subchapter L. Workforce Diploma Pilot Program, §800.501
13

14 TWC proposes the following new section to Chapter 800, relating to General Administration:

- 15
16 Subchapter B. Allocations, §800.69
17

18 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

19 The proposed amendments to Chapter 800 create new §800.69, Integrated English Literacy and
20 Civics Education Program, which outlines how funds appropriated to the state under Workforce
21 Innovation and Opportunity Act (WIOA), §243, Integrated English Literacy and Civics
22 Education (IELCE), will be allocated through a statewide competition.
23

24 The proposed amendments incorporate into rule the requirements of House Bill (HB) 1602 and
25 HB 2575, as passed by the 88th Texas Legislature, Regular Session (2023).
26

27 HB 1602 requires TWC to establish rules to develop performance criteria for the prioritization
28 for the continuous award of grant funds. As such, TWC is proposing revisions to Subchapter B.
29 Allocations, §800.68(a).
30

31 HB 2575 requires revisions to the definition of "qualified providers" in Subchapter L, Workforce
32 Diploma Pilot Program, §800.501(12).
33

34 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

35 (Note: Minor editorial changes are made that do not change the meaning of the rules and,
36 therefore, are not discussed in the Explanation of Individual Provisions.)
37

38 **SUBCHAPTER B. ALLOCATIONS**

39 TWC proposes the following amendments to Subchapter B:
40

41 **§800.68. Adult Education and Literacy**

42 Section 800.68 outlines how the state allocates General Revenue funds as well as WIOA, Title II,
43 Temporary Assistance for Needy Families (TANF) funds to support the Adult Education and
44 Literacy (AEL) program in Texas. Added to §800.68(a) are the HB 1602 requirements relating to
45 priority of awarding grant funds based on performance criteria comparable to Texas Labor Code
46 §315.007. TWC also proposes removing §800.68(d) and placing it in new section, §800.69.

1
2 **§800.69. Integrated English Literacy and Civics Education Program**

3 New §800.69 sets forth the state's allocation methodology that allows eligible applicants to
4 demonstrate a need for funds to provide IELCE program activities to eligible adult learners
5 across the state.
6

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

8 TWC proposes the following amendments to Subchapter L:
9

10 **§800.501. Definitions**

11 Section 800.501 is amended to update the definition of "qualified provider" to align with Texas
12 Labor Code §317.004(2)(B), as amended by HB 2575.
13

14 **PART III. IMPACT STATEMENTS**

15 Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the
16 rules will be in effect, the following statements will apply:
17

18 There are no additional estimated costs to the state and to local governments expected as a result
19 of enforcing or administering the rules.
20

21 There are no estimated cost reductions to the state and to local governments as a result of
22 enforcing or administering the rules.
23

24 There are estimated losses in revenue to local governments as a result of enforcing or
25 administering the rules. The US Department of Education's Office of Career, Technical, and
26 Adult Education (OCTAE) has determined that TWC's AEL program can no longer require
27 applicants to accept both WIOA §231 and §243 funds. Instead, applicants must be allowed to
28 choose whether to apply for one or both funds. In response to OCTAE's directive, TWC will
29 offer AEL and Integrated English Literacy and Civics Education (IELCE) funds through separate
30 competitive statewide applications. Separating the application processes could cause funding that
31 was previously allocated to providers based upon the counties served in each local workforce
32 development area (workforce area) to distribute differently. Specifically, IELCE funds will now
33 be awarded through statewide competition and based on demonstrated need, while regular AEL
34 funds will still be allocated proportionally to the state's 28 workforce areas based on eligible
35 populations by county. IELCE funding will still be available statewide, but IELCE services may
36 not be locally available in all 254 Texas counties due to the changes in the procurement process,
37 which could mean a loss of funds in some areas if no providers apply for funding. In particular,
38 some rural communities may not have a demonstrated need for the funds because of their small
39 populations, which may cause a disadvantage for rural applicants.
40

41 There are no foreseeable implications relating to costs or revenue of the state or local
42 governments as a result of enforcing or administering the rules.
43

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

1
2 There is anticipated adverse economic impact on small businesses, microbusinesses, or rural
3 communities as a result of enforcing or administering the rules. Because IELCE funds now will
4 be awarded through statewide competition instead of through proportional allocation to all
5 workforce areas, smaller grant recipients in rural areas may not find it financially feasible to
6 compete for grants.
7

8 Based on the analyses required by Texas Government Code, §2001.024, TWC has determined
9 that the requirement to repeal or amend a rule, as required by Texas Government Code,
10 §2001.0045, does not apply to this rulemaking.
11

12 Takings Impact Assessment

13 Under Texas Government Code §2007.002(5), "taking" means a governmental action that affects
14 private real property, in whole or in part or temporarily or permanently, in a manner that requires
15 the governmental entity to compensate the private real property owner as provided by the Fifth
16 and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or §19,
17 Article I, or restricts or limits the owner's right to the property that would otherwise exist in the
18 absence of the governmental action, and is the producing cause of a reduction of at least 25
19 percent in the market value of the affected private real property, determined by comparing the
20 market value of the property as if the governmental action is not in effect and the market value of
21 the property determined as if the governmental action is in effect. TWC completed a Takings
22 Impact Analysis for the proposed rulemaking action under Texas Government Code §2007.043.
23 The primary purpose of this proposed rulemaking action, as discussed elsewhere in this
24 preamble, is to establish rules as required by HB 1602, amend existing rules as necessitated by
25 HB 2575, and implement changes related to federal statutory requirements regarding the
26 allocation of WIOA Title II funds.
27

28 The proposed rulemaking action will not create any additional burden on private real property or
29 affect private real property in a manner that would require compensation to private real property
30 owners under the US Constitution or the Texas Constitution. The proposal also will not affect
31 private real property in a manner that restricts or limits an owner's right to the property that
32 would otherwise exist in the absence of the governmental action. Therefore, the proposed
33 rulemaking will not cause a taking under Texas Government Code Chapter 2007.
34

35 Government Growth Impact Statement

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

- 37 --will not create or eliminate a government program;
- 38 --will not require the creation or elimination of employee positions;
- 39 --will not require an increase or decrease in future legislative appropriations to TWC;
- 40 --will not require an increase or decrease in fees paid to TWC;
- 41 --will not create a new regulation;
- 42 --will not expand, limit, or eliminate an existing regulation;
- 43 --will not change the number of individuals subject to the rules; and
- 44 --will not positively or adversely affect the state's economy.
45

46 Economic Impact Statement and Regulatory Flexibility Analysis

1 TWC has determined that the rules will not have an adverse economic impact on small
2 businesses or rural communities, as the proposed rules place no requirements on small businesses
3 or rural communities.

4
5 Mariana Vega, Director, Labor Market Information, has determined that there is not a significant
6 negative impact upon employment conditions in the state as a result of the rules.

7
8 Courtney Arbour, Director, Workforce Development Division, has determined that for each year
9 of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing
10 the proposed rules will be to maximize the use of funds while ensuring equitable access to
11 entities that have demonstrated program effectiveness.

12
13 TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be
14 within TWC's legal authority to adopt.

15 16 **PART IV. COORDINATION ACTIVITIES**

17 The proposed amendments align TWC rules with federal statutes and regulations regarding
18 procurement of WIOA Title II funds, and implement HB 1672 and HB 2575, as passed by the
19 88th Texas Legislature, Regular Session (2023). AEL program staff have informed AEL grant
20 recipients of the proposed rulemaking through their regular biweekly conference calls. The
21 public will have an opportunity to comment on these proposed rules for 30 days upon publication
22 in the *Texas Register*.

23 24 **PART V. PUBLIC COMMENTS**

25 Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov
26 and must be received no later than December 25, 2023.

27 28 **PART VI. STATUTORY AUTHORITY**

29 The rules are proposed under the following statutory authority:

30 --Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to
31 adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC
32 services and activities; and

33 --Texas Labor Code Chapter 317, enacted by Senate Bill 1055, 86th Texas Legislature, Regular
34 Session (2019), which required TWC to establish and administer the Workforce Diploma Pilot
35 Program.

36
37 Additionally, HB 1602, 88th Texas Legislature, Regular Session (2023), added Texas Labor
38 Code §315.002(b-1), which requires TWC to establish rules developing annual performance
39 criteria for prioritizing the awarding of grant funds.

40
41 The proposed rules implement Title 4, Texas Labor Code, particularly Chapter 315.

1 AEFLA §211(c), will be allocated by the Commission to the workforce areas
2 according to the established federal formula, as follows:

3
4 (1) 100 percent will be based on:

5
6 (A) the relative proportion of individuals residing within each workforce area
7 who are at least 18 years of age, do not have a secondary school diploma
8 or its recognized equivalent, and are not enrolled in secondary school,
9 during the most recent period for which statistics are available;

10
11 (B) an equal base amount; and

12
13 (C) the application of a hold-harmless/stop-gain procedure.

14
15 (2) No more than 15 percent of the funds expended as part of this workforce area
16 allocation shall be used for administrative costs, as defined by Commission
17 policy.

18
19 (3) No more than 10 percent of this allocation shall be available for expenditure
20 within each workforce area on the basis of the achievement of performance
21 benchmarks, as set forth in subsection (e) of this section.

22
23
24 (d) At least 80 percent of federal TANF funds associated with the AEL program--
25 together with any state general revenue funds appropriated as TANF maintenance-
26 of-effort--will be allocated by the Commission to the workforce areas according to a
27 need-based formula, as follows:

28
29 (1) 100 percent will be based on:

30
31 (A) the relative proportion of the unduplicated number of TANF adult
32 recipients with educational attainment of less than a secondary diploma
33 during the most recently completed calendar year;

34
35 (B) an equal base amount; and

36
37 (C) the application of a hold-harmless/stop-gain procedure.

38
39 (2) No more than 15 percent of the funds expended as part of this workforce area
40 allocation shall be used for administrative costs, as defined by federal
41 regulations and Commission policy.

42
43 (3) No more than 10 percent of this allocation shall be available for expenditure
44 within each workforce area on the basis of the achievement of performance
45 benchmarks, as set forth in subsection (e) of this section.

1
2 (e) AEL performance accountability benchmarks shall be established to coincide with
3 performance measures and reports, or other periods, as determined by the
4 Commission. Levels of performance shall, at a minimum, be expressed in an
5 objective, quantifiable, and measurable form, and show continuous improvement.
6

7 (f) Performance accountability benchmarks shall:
8

9 (1) include measures for high school equivalency program or ability-to-benefit
10 program enrollment and achievement, as outlined in paragraph (2) of this
11 subsection. A postsecondary ability-to-benefit program, as outlined in
12 paragraphs (2) and (3) of this subsection, is a postsecondary education or
13 training program that:
14

15 (A) results in a recognized postsecondary credential; and
16

17 (B) enrolls AEL eligible participants who:
18

19 (i) do not have a high school diploma or recognized equivalency;
20

21 (ii) qualify for federal student financial aid eligibility under the federal
22 Ability-to-Benefit provisions enacted in §484(d) of the Higher
23 Education Act of 1965; and
24

25 (iii) demonstrate on an assessment instrument that the participant can
26 pass college-level courses with some support;
27

28 (2) include measures that require:
29

30 (A) at least 25 percent of all participants served in the program year to be
31 enrolled in a high school equivalency or postsecondary ability-to-benefit
32 program; and
33

34 (B) at least 70 percent of participants who were in a high school equivalency
35 or postsecondary ability-to-benefit program during the program year and
36 exited during the program year to achieve either a high school
37 equivalency or a recognized postsecondary credential; and
38

39 (3) be approved by the Commission each program year for milestones toward
40 meeting high school equivalency program or postsecondary ability-to-benefit
41 program enrollment and achievement as outlined in paragraph (2) of this
42 subsection.
43

44 **§800.69. Integrated English Literacy and Civics Education Program.**
45

- 1 (a) At least 82.5 percent of the AEFLA §243 Integrated English Literacy and Civics
2 Education federal award allocated to the state must be awarded to entities with
3 demonstrated effectiveness as determined through a statewide competitive
4 procurement, as follows:
5
6 (1) 100 percent of the award will be based on the demonstrated need cited and
7 supported with data by the eligible applicant as part of a statewide procurement;
8
9 (2) No more than 5 percent of the funds expended as part of the total allocation
10 shall be used for administrative costs, as defined by AEFLA, provided,
11 however, that the Special Rule outlined in AEFLA §233(b) shall apply with
12 effective justification, as appropriate;
13
14 (3) No more than 10 percent of this allocation shall be available for expenditure on
15 the basis of the achievement of performance benchmarks, as set forth in
16 §800.68(e); and
17
18 (4) The application of a hold-harmless/stop gain procedure.
19
20 (b) The Commission shall give priority in awarding funds to entities that consistently
21 satisfy annual performance requirements comparable to §800.68(f) of this
22 subchapter.
23

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

25 **§800.501. Definitions.**

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

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

- 1 (B) prepares an individual to be successful in any of a full range of secondary
2 or postsecondary education options;
3
- 4 (C) includes counseling to support an individual in achieving the individual's
5 education and career goals;
6
- 7 (D) includes, as appropriate, education offered concurrently with, and in the
8 same context as, workforce preparation activities and training for a
9 specific occupation or occupational cluster;
10
- 11 (E) organizes education, training, and other services to meet the particular
12 needs of an individual in a manner that accelerates the educational and
13 career advancement of the individual to the extent practicable;
14
- 15 (F) enables an individual to attain a secondary school diploma or its
16 recognized equivalent, and at least one recognized postsecondary
17 credential; and
18
- 19 (G) helps an individual enter or advance within a specific occupation or
20 occupational cluster (29 USC §3102, Definitions).
21
- 22 (4) Eligible participant--An individual who is over the age of compulsory school
23 attendance, as prescribed by Texas Education Code, §25.085, and as required by
24 the Agency, must:
25
- 26 (A) be a Texas resident;
27
- 28 (B) lack a high school diploma;
29
- 30 (C) be authorized to work in the United States; and
31
- 32 (D) be able to work immediately upon graduation from the program.
33
- 34 (5) Employability skills certification program--Refers to a certification in general
35 skills that are necessary for success in the labor market at all employment levels
36 and in all industry sectors. Employability skills include problem-solving,
37 collaboration, organization, and adaptability.
38
- 39 (6) Half credit--The standard award of credit given for a course that lasts one
40 semester, and which is based on the Carnegie Unit. When determining credits,
41 qualified providers should consider instructional time plus the amount of time
42 that the student would take to complete the coursework in a high school
43 semester or academic year. In traditional education models, a student typically
44 attends a class for 55 to 60 minutes a day for four or five days a week in
45 addition to studying independently.
46

- 1 (7) High school diploma--A credential awarded by an entity, based on completion
2 of all state graduation requirements as outlined in Texas Education Code,
3 §28.025 and §39.023 and 19 TAC Chapter 74 (relating to Curriculum
4 Requirements) and Chapter 101 (relating to Assessment).
5
- 6 (8) Industry-recognized credential--A state-approved credential verifying an
7 individual's qualifications and competence and is issued by a third party with
8 the relevant authority to issue such credentials (US Department of Labor, 2010).
9 Industry-recognized credentials offered by qualified providers must align with
10 the Agency's mission to target high-growth, high-demand, and emerging
11 occupations that are crucial to the state and local workforce economies, and
12 must reflect the target occupations for the workforce areas in which services
13 will be provided. Qualified providers may also reference the list of industry-
14 based certifications for public school accountability published by the Texas
15 Education Agency.
16
- 17 (9) Learning Plan Development--The process by which an individualized learning
18 plan is developed after student intake; it is maintained through coaching and
19 mentoring.
20
- 21 (10) One credit--The standard award credit given for a course that lasts a full
22 academic year, and which is based on the Carnegie Unit. When determining
23 credits, qualified providers should consider instructional time plus the amount
24 of time that the student would take to complete the coursework in a high school
25 semester or academic year. In traditional education models, a student typically
26 attends a class for 55 to 60 minutes a day for four or five days a week, in
27 addition to studying independently.
28
- 29 (11) Program--Refers to the Workforce Diploma Pilot Program, set forth in Texas
30 Labor Code, Chapter 317.
31
- 32 (12) Qualified provider--A provider that may participate in the Program and receive
33 reimbursement and that:
34
 - 35 (A) is a public, nonprofit, or private entity that is:
 - 36
 - 37 (i) authorized under the Texas Education Code or other state law to
38 grant a high school diploma; or
 - 39
 - 40 (ii) accredited by a regional accrediting body, as established by the US
41 Secretary of Education, pursuant to 20 USCS §1099b, Recognition
42 of Accrediting Agency or Association and working in partnership
43 with an entity described by clause (i) of this subparagraph;
44
 - 45 (B) has at least two years of experience providing dropout reengagement
46 services to adult students, including recruitment, learning plan

1 development, and proactive coaching and mentoring, leading to the
2 obtainment of a high school diploma;

3
4 (C) is equipped to:

5
6 (i) provide:

7
8 (I) academic skill intake assessment and transcript evaluations;

9
10 (II) remediation coursework in literacy and numeracy;

11
12 (III) a research-validated academic resiliency assessment and
13 intervention;

14
15 (IV) employability skills development aligned to employer needs;

16
17 (V) career pathways coursework;

18
19 (VI) preparation for the attainment of industry-recognized
20 credentials; and

21
22 (VII) career placement services; and

23
24 (ii) develop a learning plan that integrates academic requirements and
25 career goals; and

26
27 (D) offers a course catalog that includes all courses necessary to meet high
28 school graduation requirements in Texas, as authorized under 19 TAC
29 Chapter 74, Subchapter B (relating to Graduation Requirements).

30
31 (13) Regional accrediting body--Must meet the criteria established by the US
32 Secretary of Education pursuant to 20 USCS §1099b, Recognition of
33 Accrediting Agency or Association, and appear on the US Secretary of
34 Education's list of federally recognized accrediting agencies in the *Federal*
35 *Register*, as stated in 34 CFR §602.2. A copy of the list may be obtained from
36 the US Department of Education.