

1 **CHAPTER 800. GENERAL ADMINISTRATION**

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3 **ADOPTED RULES WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS**
4 **REGISTER. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS**
5 **SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE TEXAS REGISTER.**

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7 **ON NOVEMBER 26, 2018, THE TEXAS WORKFORCE COMMISSION ADOPTED THE**
8 **BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS REGISTER.**

9
10 Estimated date of publication in the *Texas Register*: **December 14, 2018**
11 The rules will take effect: **December 17, 2018**

12
13 The Texas Workforce Commission (TWC) adopts amendments to the following sections of
14 Chapter 800, relating to General Administration, *without* changes, as published in the August 17,
15 2018, issue of the *Texas Register* (43 TexReg 5332):

- 16 Subchapter A. General Provisions, §800.2
- 17 Subchapter B. Allocations, §800.78

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20 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**
21 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

22
23 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

24 Chapter 800 is being revised to align the definition of Adult Education and Literacy (AEL)
25 services with the definition found in the Workforce Innovation and Opportunity Act (WIOA) and
26 to align the deobligation periods for AEL funds more appropriately with the AEL enrollment
27 cycle.

28
29 WIOA was signed into law on July 22, 2014, replacing the Workforce Investment Act (WIA) of
30 1998. Title II of WIOA includes substantial changes to definitions relating to AEL. As previous
31 definitions within Chapter 800 reflected WIA, the enactment of WIOA renders those definitions
32 out-of-date. Accordingly, the definition of "Adult Education and Literacy (AEL)" and other
33 definitions in §800.2 shall be amended to align with the definitions in WIOA.

34
35 After several years of program operations at TWC, there is a need to reevaluate the rules by
36 which AEL funds are deobligated based on the expenditure trends of AEL grant recipients. Like
37 many education sector institutions, AEL grant recipients typically experience a majority of their
38 enrollments during the first three months of the program year (July - September). When AEL
39 grant recipients experience low enrollment during these months when highest enrollment is
40 expected, program delivery statistics demonstrate the unlikelihood of increases later in the year
41 being sufficient to offset initial low enrollment. Low enrollment numbers correlate to lower
42 expenditure thresholds. Establishing expenditure thresholds based on enrollment in months four,
43 five, six, or seven will enable TWC to deobligate the funds of grant recipients that have low
44 expenditures earlier in the program year. As a result, TWC will have adequate time to reallocate
45 funds to other AEL grant recipients with demonstrated higher enrollment and expenditures.

1 Reallocation of funds earlier in the program year will also give grant recipients adequate time to
2 educate and train participants, and participants will have adequate time to achieve outcomes.

3
4 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

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

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8 **SUBCHAPTER A. GENERAL PROVISIONS**

9 **TWC adopts the following amendments to Subchapter A:**

10
11 **§800.2. Definitions**

12 Section 800.2(1) is amended to align the definition of "Adult Education and Literacy (AEL)"
13 with the definition in WIOA §203(1). AEL is now defined as "academic instruction and
14 education services below the postsecondary level that increase an individual's ability to read,
15 write, and speak in English and perform mathematics or other activities necessary for the
16 attainment of a secondary school diploma or its recognized equivalent; participate in job training
17 and retraining programs or transition to postsecondary education and training; and obtain and
18 retain employment."

19
20 Sections 800.2(15)(E) and 800.2(16) are removed because Project Reintegration of Offenders
21 (Project RIO) is no longer operational. However, Local Workforce Development Boards
22 (Boards) will continue their ongoing efforts to serve ex-offenders through other program
23 activities and services, as appropriate.

24
25 Throughout this section, references and citations pertaining to the repealed WIA have been
26 updated to align with WIOA.

27
28 Paragraphs and subparagraphs have been renumbered and relettered as necessary.

29
30 **SUBCHAPTER B. ALLOCATIONS**

31 **TWC adopts the following amendments to Subchapter B:**

32
33 **§800.78. Midyear Deobligation of AEL Funds**

34 To improve the deobligation of AEL funds by aligning deobligation with the AEL enrollment
35 cycle, §800.78(a)(1) is amended to change the months when expenditure thresholds are evaluated
36 from the end of months five, six, seven, or eight of the program year (that is, midyear) to the end
37 of months four, five, six, or seven (October, November, December, or January) of the program
38 year. Changing the months of evaluation will allow recipients of reallocated funds additional
39 time to enroll participants, educate and train them adequately to achieve outcomes, and fully
40 spend the reallocated funds.

41 No comments were received.

42
43 TWC hereby certifies that the adoption has been reviewed by legal counsel and found to be
44 within TWC's legal authority to adopt.

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

4
5 The adopted rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.
6

1 **CHAPTER 800. GENERAL ADMINISTRATION**

2
3 **SUBCHAPTER A. GENERAL PROVISIONS**

4
5 **§800.2. Definitions.**

6
7 The following words and terms, when used in this part, relating to the Texas Workforce
8 Commission, shall have the following meanings, unless the context clearly indicates
9 otherwise.

- 10
11 (1) Adult Education and Literacy (AEL)--Academic instruction and education
12 services below the postsecondary level that increase an individual's ability to:
13
14 (A) read, write, and speak in English and perform mathematics or other
15 activities necessary for the attainment of a secondary school diploma or
16 its recognized equivalent;
17
18 (B) participate in job training and retraining programs or transition to
19 postsecondary education and training; and
20
21 (C) obtain and retain employment.
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23
24 (2) Agency--The unit of state government established under Texas Labor Code
25 Chapter 301 that is presided over by the Commission and administered by the
26 executive director to operate the integrated workforce development system and
27 administer the unemployment compensation insurance program in this state as
28 established under the Texas Unemployment Compensation Act, Texas Labor
29 Code, Title 4, Subtitle A, as amended. The definition of "Agency" shall apply
30 to all uses of the term in rules contained in this part, unless otherwise defined,
31 relating to the Texas Workforce Commission.
32
33 (3) Allocation--The amount approved by the Commission for expenditures to a
34 local workforce development area during a specified program year, according
35 to specific state and federal requirements.
36
37 (4) Board--A Local Workforce Development Board created pursuant to Texas
38 Government Code §2308.253 and certified by the governor pursuant to Texas
39 Government Code §2308.261. This includes such a Board when functioning as
40 the Local Workforce Investment Board as described in the Workforce
41 Innovation and Opportunity Act (WIOA) §107 (29 USC §3122), including
42 those functions required of a youth standing committee, as provided for under
43 WIOA §107(i). The definition of Board shall apply to all uses of the term in
44 the rules contained in this part, or unless otherwise defined, relating to the
45 Texas Workforce Commission. Boards are subrecipients as defined in OMB
46 Circular A-133.

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- (5) Child Care--Child care services funded through the Commission, which may include services funded under the Child Care and Development Fund, WIOA, and other funds available to the Commission or a Board to provide quality child care to assist families seeking to become independent from, or who are at risk of becoming dependent on, public assistance while parents are either working or participating in educational or training activities in accordance with state and federal statutes and regulations.
 - (6) Choices--The employment and training activities created under §31.0126 of the Texas Human Resources Code and funded under Temporary Assistance for Needy Families (TANF) (42 USC 601 et seq.) to assist individuals who are receiving temporary cash assistance, transitioning off, or at risk of becoming dependent on temporary cash assistance or other public assistance in obtaining and retaining employment.
 - (7) Commission--The body of governance of the Texas Workforce Commission composed of three members appointed by the governor as established under Texas Labor Code §301.002 that includes one representative of labor, one representative of employers, and one representative of the public. The definition of Commission shall apply to all uses of the term in rules contained in this part, unless otherwise defined, relating to the Texas Workforce Commission.
 - (8) Formal Measures--Workforce development services performance measures adopted by the governor and developed and recommended through the Texas Workforce Investment Council (TWIC).
 - (9) Employment Service--A program to match qualified job seekers with employers through a statewide network of one-stop career centers. (Wagner-Peyser Act of 1933 (Title 29 USC, Chapter 4B) as amended by WIOA (PL 113-128))
 - (10) Executive Director--The individual appointed by the Commission to administer the daily operations of the Agency, which may include an individual delegated by the Executive Director to perform a specific function on behalf of the Executive Director.
 - (11) Local Workforce Development Area (workforce area)--Workforce areas designated by the governor pursuant to Texas Government Code §2308.252 and functioning as a Local Workforce Investment Area, as provided for under WIOA §106 and §189(i)(1) (29 USC §3121 and §3249) .
 - (12) One-Stop Service Delivery Network--A one-stop-based network under which entities responsible for administering separate workforce investment, educational, and other human resources programs and funding streams

1 collaborate to create a seamless network of service delivery that shall enhance
2 the availability of services through the use of all available access and
3 coordination methods, including telephonic and electronic methods--also
4 known as Texas Workforce Solutions.
5

6 (13) Performance Measure--An expected performance outcome or result.
7

8 (14) Performance Target--A contracted numerical value setting the acceptable and
9 expected performance outcome or result to be achieved for a performance
10 measure, including Core Outcome Formal Measures. Achievement between 95
11 and 105 percent of the established target is considered meeting the target.
12

13 (15) Program Year--The twelve-month period applicable to the following as
14 specified:
15

16 (A) Child Care: October 1 - September 30;
17

18 (B) Choices: October 1 - September 30;
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20 (C) Employment Service: October 1 - September 30;
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22 (D) Supplemental Nutrition Assistance Program Employment and Training:
23 October 1 - September 30;
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25 (E) Trade Act services: October 1 - September 30;
26

27 (F) WIOA Adult, Dislocated Worker, and Youth formula funds: July 1 - June
28 30;
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30 (G) WIOA Alternative Funding for Statewide Activities: October 1 -
31 September 30;
32

33 (H) WIOA Alternative Funding for One-Stop Enhancements: October 1 -
34 September 30; and
35

36 (I) Adult Education and Literacy: July 1 - June 30.
37

38 (16) Supplemental Nutrition Assistance Program Employment and Training (SNAP
39 E&T)--A program to assist SNAP recipients to become self-supporting through
40 participation in activities that include employment, job readiness, education,
41 and training, activities authorized and engaged in as specified by federal
42 statutes and regulations (7 USC §2011), and Chapter 813 of this title relating to
43 Supplemental Nutrition Assistance Program Employment and Training.
44

45 (17) TANF--Temporary Assistance for Needy Families, which may include
46 temporary cash assistance and other temporary assistance for eligible

1 individuals, as defined in the Personal Responsibility and Work Opportunity
2 Reconciliation Act of 1996, as amended 7 USC §2011 (et seq.) and the TANF
3 statutes and regulations (42 USC §601 et seq., 45 Code of Federal Regulations
4 (CFR) Parts 260 - 265). TANF may also include the TANF State Program
5 (TANF SP), relating to two-parent families, which is codified in Texas Human
6 Resources Code, Chapter 34.
7

8 (18) Trade Act Services--Programs authorized by the Trade Act of 1974, as
9 amended (and 20 CFR Part 617) providing services to dislocated workers
10 eligible for Trade benefits through Workforce Solutions Offices.
11

12 (19) TWIC--Texas Workforce Investment Council, appointed by the governor
13 pursuant to Texas Government Code §2308.052 and functioning as the State
14 Workforce Investment Board, as provided for under WIOA §101(e) (29 USC
15 3111(e)). In addition, pursuant to WIOA §193(a)(5) (29 USC (3253(a)(5))),
16 TWIC maintains the duties, responsibilities, powers, and limitations as
17 provided in Texas Government Code §§2308.101 - 2308.105.
18

19 (20) WIOA-Workforce Innovation and Opportunity Act--(PL 113 - 128, 29 USC
20 §3101 et seq.).References to WIOA include references to WIOA formula-
21 allocated funds unless specifically stated otherwise.
22

23 (21) WIOA Formula-Allocated Funds--Funds allocated by formula to workforce
24 areas for each of the following separate categories of services: WIOA Adult,
25 Dislocated Worker, and Youth (excluding the Secretary's and Governor's
26 reserve funds and rapid response funds).
27

28 (22) Workforce Solutions Offices Partner--An entity that carries out a workforce
29 investment, educational, or other human resources program or activity, and that
30 participates in the operation of the One-Stop Service Delivery Network in a
31 workforce area consistent with the terms of a memorandum of understanding
32 entered into between the entity and the Board.
33

34 **SUBCHAPTER B. ALLOCATIONS**

35 **§800.78. Midyear Deobligation of AEL Funds.**

36 (a) The Commission may deobligate funds from an AEL grant recipient during the program
37 year if an AEL grant recipient is not meeting the expenditure thresholds set forth in
38 subsection (b) of this section, provided, however, that the requirements of subsection (d)
39 of this section are satisfied.
40

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

3
4 (2) The Commission shall not deobligate more than the difference between an
5 AEL grant recipient's actual expenditures and the amount corresponding to the
6 relative proportion of the program year.

7
8 (3) The Commission shall not deobligate funds from an AEL grant recipient that
9 failed to meet the expenditure thresholds set forth in subsection (b) of this
10 section, if within 60 days prior to the potential deobligation period the
11 Commission executes a contract amendment for a supplemental allocation or
12 reallocation of funds in the same program funding category.

13
14 (b) The Commission may deobligate funds from an AEL grant recipient midyear, as set
15 forth in subsection (a) of this section, if an AEL grant recipient fails to achieve the
16 expenditure of an amount corresponding to 90 percent or more of the relative
17 proportion of the program year.

18
19 (c) An AEL grant recipient subject to deobligation for failure to meet the requirements
20 set forth in this section shall, upon request by the Commission, submit a written
21 justification. For an AEL consortium, a copy must be provided to all AEL
22 consortium members. The written justification shall provide sufficient detail
23 regarding the actions an AEL grant recipient will take to address its deficiencies,
24 including:

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26 (1) expansion of services proportionate to the available resources;

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28 (2) projected service levels and related performance;

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30 (3) reporting outstanding obligations; and

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32 (4) any other factors an AEL grant recipient would like the Commission to
33 consider.

34
35 (d) Any amounts deobligated from an AEL grant recipient must be made available as a
36 first priority to any other AEL grant recipient(s) providing AEL services within the
37 same workforce area that meet the requirements of §800.80(a) of this subchapter,
38 upon receipt and approval by the Commission of an acceptable plan.

39
40 (e) To the extent this section may be found not to comply with federal requirements, or
41 should any related federal waivers expire, the Commission will be subject to federal
42 requirements in effect, as applicable.