

## **CHAPTER 800. GENERAL ADMINISTRATION**

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

ON **JUNE 30, 2016**, THE TEXAS WORKFORCE COMMISSION ADOPTED THE BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated date of publication in the *Texas Register*: **July 15, 2016**

The rules will take effect: **July 20, 2016**

The Texas Workforce Commission (Commission) adopts amendments to the following section of Chapter 800, relating to General Administration, *without changes*, as published in the April 22, 2016, issue of the Texas Register (41 TexReg 2887):

Subchapter B. Allocations, §800.68

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

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

The purpose of the adopted Chapter 800 rule change is to amend Agency rules to clarify that the allocation of Adult Education and Literacy (AEL) funds, pursuant to Texas Labor Code §302.062(d), includes the application of a hold-harmless/stop-gain calculation, as defined in Agency rule §800.52(7). This adopted amendment also strikes an adjacent clause that is now out of date and unnecessary.

### **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES**

#### **SUBCHAPTER B. ALLOCATIONS**

**The Commission adopts the following amendments to Subchapter B:**

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

Section 800.68(b)(1)(C) is amended by:

- adding the stop-gain option to the hold-harmless procedure; and
- removing "(for any program year after Fiscal Year (FY) 2015)," as it is no longer relevant.

Section 800.68(c)(1)(C) is amended by:

- adding the stop-gain option to the hold-harmless procedure; and
- removing "(for any program year after Fiscal Year (FY) 2015)," as it is no longer relevant.

Section 800.68(d)(3) is amended by:

- adding the stop-gain option to the hold-harmless procedure; and

--removing "(for any program year after Fiscal Year (FY) 2015)," as it is no longer relevant.

Section 800.68(e)(1)(C) is amended by:

--adding the stop-gain option to the hold-harmless procedure; and

--removing "(for any program year after Fiscal Year (FY) 2015)," as it is no longer relevant.

**Comment:** One commenter requested that the definition found in Texas Labor Code §302.62(d) of "hold-harmless/stop-gain" be added to §800.68.

**Response:** The Commission retains the definition of "hold-harmless/stop-gain" found in §800.52, Definitions, which meets the commenter's request for a definition.

COMMENTS WERE RECEIVED FROM:

Jon Engel, Community Action, Inc.

The Agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the Agency's authority to adopt.

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

The adopted rule affects Title 4, Texas Labor Code, particularly Chapters 301 and 302.

## CHAPTER 800. GENERAL ADMINISTRATION

### SUBCHAPTER B. ALLOCATIONS

#### §800.68. Adult Education and Literacy.

- (a) AEL funds available to the Commission to provide services under the federal Adult Education and Family Literacy Act (AEFLA), WIA Title II, together with associated state general revenue matching funds and federal TANF funds--together with any state general revenue funds appropriated as TANF maintenance-of-effort--will be used by the Commission, as set forth in subsections (b) - (f) of this section.
- (b) At least 82.5 percent of the federal funds constituting the total state award of AEFLA state grants--including amounts allotted to the eligible agency having a state plan, as provided by AEFLA §211(c) and amounts provided to the eligible agency under §243 for English Literacy/Civics (EL/Civics)--will be allocated by the Commission to the workforce areas. From the amount allotted to the eligible agency having a state plan, as provided by AEFLA §211(c), the Commission will allocate amounts to the workforce areas according to the established federal formula, as follows:
  - (1) 100 percent will be based on:
    - (A) the relative proportion of individuals residing within each workforce area who are at least 18 years of age, do not have a secondary school diploma or its recognized equivalent, and are not enrolled in secondary school, during the most recent period for which statistics are available;
    - (B) an equal base amount; and
    - (C) the application of a hold-harmless/stop-gain procedure.
  - (2) No more than 5 percent of the funds expended as part of this workforce area allocation shall be used for administrative costs, as defined by AEFLA, provided, however, that the Special Rule outlined in AEFLA §233(b) shall apply with effective justification, as appropriate.
  - (3) No more than 10 percent of this allocation shall be available for expenditure within each workforce area on the basis of the achievement of performance benchmarks, as set forth in subsection (f) of this section.
- (c) At least 80 percent of the state general revenue matching funds associated with the allotment of federal funds to the eligible agency having a state plan, as provided by AEFLA §211(c), will be allocated by the Commission to the workforce areas according to the established federal formula, as follows:
  - (1) 100 percent will be based on:

- (A) the relative proportion of individuals residing within each workforce area who are at least 18 years of age, do not have a secondary school diploma or its recognized equivalent, and are not enrolled in secondary school, during the most recent period for which statistics are available;
  - (B) an equal base amount; and
  - (C) the application of a hold-harmless/stop-gain procedure.
- (2) No more than 15 percent of the funds expended as part of this workforce area allocation shall be used for administrative costs, as defined by Commission policy.
- (3) No more than 10 percent of this allocation shall be available for expenditure within each workforce area on the basis of the achievement of performance benchmarks, as set forth in subsection (f) of this section.
- (d) At least 82.5 percent of the federal funds provided to the eligible agency from amounts under AEFLA §243 for EL/Civics will be allocated by the Commission among the workforce areas according to the established federal formula, as follows:
- (1) The relative proportion based on:
    - (A) 65 percent of the average number of legal permanent residents during the most recent 10-year period, available from U.S. Citizenship and Immigration Services data; and
    - (B) 35 percent of the average number of legal permanent residents during the most recent three-year period, available from U.S. Citizenship and Immigration Services data;
  - (2) a base amount of 1 percent for each workforce area; and
  - (3) the application of a hold-harmless/stop-gain procedure.
  - (4) No more than 5 percent of the funds expended as part of this workforce area allocation shall be used for administrative costs, as defined by AEFLA.
  - (5) No more than 10 percent of this allocation shall be available for expenditure within each workforce area on the basis of the achievement of performance benchmarks, as set forth in subsection (f) of this section.
- (e) At least 80 percent of federal TANF funds associated with the AEL program--together with any state general revenue funds appropriated as TANF maintenance-of-effort--will be allocated by the Commission to the workforce areas according to a

need-based formula, as follows:

- (1) 100 percent will be based on:
    - (A) the relative proportion of the unduplicated number of TANF adult recipients with educational attainment of less than a secondary diploma during the most recently completed calendar year;
    - (B) an equal base amount; and
    - (C) the application of a hold-harmless/stop-gain procedure.
  - (2) No more than 15 percent of the funds expended as part of this workforce area allocation shall be used for administrative costs, as defined by federal regulations and Commission policy.
  - (3) No more than 10 percent of this allocation shall be available for expenditure within each workforce area on the basis of the achievement of performance benchmarks, as set forth in subsection (f) of this section.
- (f) AEL performance accountability benchmarks shall be established to coincide with performance measures and reports, or other periods, as determined by the Commission. Levels of performance shall, at a minimum, be expressed in an objective, quantifiable, and measureable form, and show continuous improvement.