The Texas Workforce Commission (Commission) adopts new Chapter 833. Community Development Initiatives, Subchapter A, General Provisions, §833.1 and Subchapter B, Texas Individual Development Account Pilot Project, §§833.11-833.15, concerning the establishment and operation of the Texas Individual Development Account Pilot Programs. Section 833.14 is adopted with changes to the proposed text as published in the October 27, 2000 issue of the *Texas Register* (25 TexReg 10719) and will be republished. Sections 833.1, 833.11-833.13, and 833.15 are adopted without changes and will not be republished.

Purpose. One of the primary goals of the Commission is to prepare, place and retain individuals in employment. Texas Labor Code §302.0672 and §302.068 provide for the establishment of a pilot program for providing an opportunity for certain qualified individuals to accumulate assets and to facilitate and mobilize savings to recipients of public assistance to assist these individuals in making the transition into the workforce from public assistance.

The adopted rules describe the operation of the individual development account pilot programs.

New Chapter 833 is added to set a location for services and activities related to Community development initiatives.

New Subchapter A and §833.1 are added to include the general provisions relating to the chapter.

New Subchapter B, including §§833.11-833.15 are added for the purpose of setting forth the purpose, program design, intent, funding, definitions, selection criteria for the Individual Development Account Pilot Project, and requirements for account administrators.

The purpose of the Individual Development Account Pilot Project is to provide certain low-income individuals who choose to participate in the pilot with an opportunity to accumulate assets and to facilitate and mobilize savings. Section 833.13 sets forth a number of terms defined for the purpose of clarifying terms that will apply to the operation of the Individual Development Account Pilot Project.

The Commission also intends that a pilot project have a strong relationship with its respective Board. The response to the request for proposal shall contain proof of support by the respective Board of the proposed pilot project.

The Commission received comments from one commenter, from the West Central Texas Workforce Board. The commenter expressed both support and concerns regarding particular aspects of the rules. A summary of the comments and the responses are set forth as follows.

Comment: The Commenter stated that, although the rules state the Commission's intent that there be a strong relationship between the pilot project and the Boards, the rules do not clearly require such a relationship. While the Commenter supports the pilot project, the Commenter did not agree with competitively procuring the pilot project outside the Board system. The Commenter stated that the proposed pilot project should be competitively procured at the local level by Boards and recommends that eligibility for the pilots be restricted to Boards, or Boards in partnership with their Texas Workforce Center contractors.

Response: The Commission agrees that coordination between Boards and the entities awarded the pilot project is essential, because the individuals being served may also be availing themselves of services through the Texas Workforce Centers. The Commission is charged with implementing the specific requirements of the state law, which are slightly different from current law allowing Boards to administer individual development accounts funded directly with allocated Temporary Assistance for Needy Family (TANF) funds. The new state law authorized no direct funding for the pilot, but the Commission has identified limited funding to implement a two-year pilot project; continued and sustained funding may not be assured. The Commission believes a state-level procurement to be the most efficient and effective way to minimize administrative expenses and maximize funds for services to eligible individuals. The Commission recognizes the need for collaboration and cooperation at the local level. Therefore, the Commission has clarified that Boards may respond to the procurement or collaborate and coordinate with other responding entities. The Commission has also clarified that coordination with financial institutions is important for the success of the demonstration projects and thus amends §833.14(d).

Comment: The Commenter stated that the definition of "designated area" at §833.13(2) seems to significantly limit the ability of rural areas to apply for the pilot project. The Commenter also stated that while the larger counties may apply simply on the basis of population, the rural areas must have higher poverty rates. The Commenter recommended that the rules be revised to allow rural areas to compete solely based on population.

Response: The Commission agrees that the law establishes a higher standard for rural areas based on poverty factors, rather than population. However, the designation of areas in §833.13(2) reflects the specific requirements as set out in the law governing the pilot project. For that reason, the Commission may not change the areas statutorily defined to be served by the pilot project.

The adopted rules are proposed under Texas Labor Code §§301.061, 301.068 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary relating to Texas Workforce Commission's services and activities.

The new rules affect Texas Labor Code Title 4.

SUBCHAPTER A GENERAL PROVISIONS

The purpose of this chapter is to contain initiatives designed to assist low-income families in obtaining and maintaining self-sufficiency.

SUBCHAPTER B TEXAS INDIVIDUAL DEVELOPMENT ACCOUNT PILOT PROJECT

The purpose of the Texas Individual Development Account Pilot Project is to implement Texas Labor Code §301.068, by allowing eligible, employed low-income individuals an opportunity to accumulate assets in one or more individual development accounts, and facilitating the mobilization of savings to assist such individuals and their families to achieve economic self-sufficiency.

RULE §833.12 Program Design, Intent, and Funding

(a) Program Design. The Commission's design of the Texas Individual Development Account Pilot Project consists of the issuance of a request for proposals from qualifying nonprofit organizations for the administration of the pilot project within designated areas of the state. The pilot project continues through 2005 pursuant to Texas Labor Code §301.068.

(b) Intent. The Commission's intent is for those entities awarded funds under this pilot project to maximize the use of public and private funds to the fullest extent feasible, and to collaborate and coordinate service strategies with any and all available resources in the local area to assist eligible, employed low-income individuals and their families to accumulate assets and attain economic self-sufficiency.

(c) Funding. Funding for the Texas Individual Development Account Pilot Project and the matching funds for qualified expenses of individual development accounts will consist of funds from the TANF funds and any additional available public or private funds, and shall be expended in a manner consistent with applicable federal and state statutes and regulations. TANF and Welfare-to-Work funds may match up to $2,000 per year, per account, of earned income (excluding any portion of an Earned Income Tax Credit (EITC) refund) deposited in an individual development account. Other eligible, low-income populations that are saving for other expenses may be served with third-party funds and any other public funds secured by the organizations selected for the pilot project, as long as the uses of those funds meet the requirements of any applicable federal or state statutes and regulations and meet the terms of the pilot project as defined in the request for proposal package.

RULE §833.13 Definitions

For purposes of this subchapter, the following words or terms shall have the following definitions unless the context clearly indicates otherwise.

(1) Assets For Independence Act (AFIA)--The Act contained in Pub. L. No. 105-285, Title IV, 112 Stat. 2759 (Oct. 27, 1998) (codified in the note of 42 U.S.C.A. §604).

(2) Designated Area--One of eight areas defined by Texas Labor Code §301.068(c)(6)(A) through (D), which may contain one or more pilot sites eligible for the establishment of the Texas Individual Development Account Pilot Project, including:

(A) two counties with a population of 500,000 or more but less than one million;

(B) two counties with a population of one million or more but less than two million;

(C) two counties with a population of two million or more; and

(D) two counties which must be primarily rural areas that have poverty rates per capita exceeding one and one-half times the statewide poverty rate per capita.

(3) Eligible individual--As defined in Texas Labor Code §301.068, an employed individual (and his or her spouse and minor dependents), whose family income is at or below 200 percent of the poverty level according to the effective poverty guidelines published by the U.S. Department of Health and Human Services.

(4) Individual Development Account (IDA)--An account established by or for an individual who is eligible under this subchapter to participate in the Texas Individual Development Account Pilot Project; and is contributed to with the earned income and may be contributed to with up to fifty percent of an EITC refund of the eligible individual to allow such individual to accumulate funds for specific purposes as specified in this subchapter.

(5) Low-Income--A family income level at or below 200 percent of the poverty level according to the effective poverty guidelines published by the U.S. Department of Health and Human Services.

(6) Other expenses--One or more expenses for which payment may be made from an individual development account as authorized by Texas Labor Code §301.0672 or §301.068, but not considered one of the qualified expenses as defined in this subchapter, and therefore may not be matched by TANF or Welfare-to-Work funds, but may be matched by third-party and other available public or private funds, and is subject to any applicable federal or state statute or regulation. An individual development account specified for such other expense must be created separately from any individual development account created for a qualified expense.

(7) Qualified expenses--One or more of the expenses for which payment may be made from an individual development account that is matched, all or in part, TANF or Welfare-to-Work funds on behalf of the eligible individual in whose name the account is held. Qualified expenses, as opposed to other expenses as defined in this subchapter are limited to the expenses authorized under 42 U.S.C.A. §604(h)(B), as specified for TANF and Welfare-to-Work funds at 45 C.F.R. §263.20 as follows:

(A) Postsecondary educational expenses paid from an individual development account directly to an eligible educational institution, wherein the following applies:

(i) The term "eligible educational institution" means either an "institution of higher education" as described in Higher Education Act of 1965 §§481(a)(1) or 1201(a) (20 U.S.C.A. 1088(a)(1) or 1141(a)), as such sections were in effect on August 21, 1996; or a "postsecondary vocational education school" that is an area vocational education school as defined in Carl D. Perkins Vocational and Applied Technology Education Act §521(4) subparagraph (C) or (D) (20 U.S.C.A. 2471(4)) that is in any State (as defined in 20 U.S.C.A. §2471(33), as such sections were in effect on August 21, 1996.

(ii) The term "postsecondary educational expenses" means tuition and fees required for the enrollment or attendance at an eligible educational institution; and required course fees, books, supplies, and equipment required at an eligible educational institution.

(iii) Included under this qualified expense is the eligible individual using an individual development account to save for the postsecondary educational expenses of his or her minor dependents.

(B) First home purchase expenses for qualified acquisition costs for a qualified principal residence by a qualified first-time homebuyer, if paid from an individual development account directly to the person to whom the amounts are due. For purposes of this paragraph the following definitions shall apply.

(i) Date of acquisition--the date on which a binding contract to obtain, construct, or reconstruct the new principal residence is entered into.

(ii) Qualified acquisition costs--the costs of obtaining, constructing, or reconstructing a residence, including any usual or reasonable settlement, financing, or other closing costs.

(iii) Qualified first-time homebuyer--a taxpayer (and, if married, the taxpayer's spouse) who has not owned a principal residence during the three-year period ending on the date of acquisition of the new principal residence.

(iv) Qualified principal residence--the place a qualified first-time homebuyer will reside (in accordance with the meaning of §1034 of the Internal Revenue Code of 1986), the qualified acquisition costs of which do not exceed the average purchase price of similar residences in the area.

(C) Business capitalization expenses paid from an individual development account directly to a business capitalization account in a federally insured financial institution and used for a qualified business capitalization expense. For purposes of this paragraph, the following definitions shall apply.

(i) Qualified business--any business that does not contravene any State law or public policy.

(ii) Business capitalization expense--a business expense pursuant to a qualified plan.

(iii) Qualified plan--a business plan that is approved by a financial institution, or by a nonprofit loan fund having demonstrated fiduciary integrity; includes a description of services or goods to be sold, a marketing plan, and projected financial statements; includes a description of the qualified business capitalization expenses including capital, plant equipment, working capital, and inventory expenses; and may require the eligible individual to obtain the assistance of an experienced entrepreneurial advisor.

(8) Unqualified withdrawal--A withdrawal made from an IDA by an eligible individual for purposes other than a qualified expense or other expense, wherein:

(A) the withdrawal is made from only those funds or a portion of those funds deposited by the eligible individual in his or her IDA;

(B) the eligible individual has participated in the IDA project for at least six months;

(C) the amount withdrawn is no greater than $2,000 in any given month; and

(D) the withdrawal is made for one of the following expenses:

(i) Expenses for medical care or expenses necessary to obtain medical care for such eligible individual or his or her spouse or dependents;

(ii) Payments necessary to prevent the eviction of the eligible individual, or to prevent foreclosure on the mortgage of the principal residence of the eligible individual;

(iii) Payments necessary to enable the eligible individual to meet necessary living expenses, as defined by the pilot project, following the loss of employment.

RULE §833.14 Selection Criteria for the Pilot Project

(a) The Commission shall issue a Request for Proposal to procure one or more entities to serve as account administrators to implement and deliver services associated with the pilot.

(b) An account administrator shall meet the minimum criteria established by the Commission for the pilot project, including, but not limited to the following:

(1) being an eligible entity, which includes:

(A) a nonprofit, tax-exempt organization that is incorporated under Internal Revenue Code §501(c)(3), which may include Boards;

(B) a local government entity, which may include Boards, that submits a joint proposal with such a nonprofit, tax-exempt organization;

(2) being located in or having community ties within at least one of the designated areas of the pilot project;

(3) having a collaborative relationship with at least one financial institution to facilitate administration of the accounts; and

(4) submitting a complete proposal in response to the requirements listed and discussed in the request for proposal package for the Texas Individual Development Account Pilot Project.

(c) The Commission shall select the entities to participate in the Texas Individual Development Account Pilot Project based on the responses to the request for proposal that demonstrate, among other capabilities, the entities' ability to meet the criteria contained in Assets for Independence Act (AFIA) §405 (c)(1)-(3) and (5), which are as follows:

(1) AFIA §405(c)(1), Sufficiency of project. The degree to which the project described in the application appears likely to aid project participants in achieving economic self-sufficiency through activities requiring one or more qualified expenses.

(2) AFIA §405(c)(2), Administrative ability. The experience and ability of the applicant to responsibly administer the project.

(3) AFIA §405(c)(3), Ability to assist participants. The experience and ability of the applicant in recruiting, educating, and assisting project participants to increase their economic independence and general well-being through the development of assets.

(4) AFIA §405(c)(5), Adequacy of plan for providing information for evaluation. The adequacy of the plan for providing information relevant to an evaluation of the project.

(d) The Commission may also consider the following additional criteria.

(1) As referenced in the AFIA §405(c)(4), the entities' commitment of non-Federal funds; and the aggregate amount of direct funds from non-Federal public sector and from private sources that are formally committed to the project as matching contributions.

(2) Any additional criteria contained in the request for proposal or other such factors relevant to the purposes of the Texas Individual Development Account Pilot Project, including the formation of collaborative relationships and/or agreements with local support service entities, financial institutions, and other entities to reduce and/or eliminate a participant's need to make an unqualified withdrawal.

RULE §833.15 Requirements for Account Administrators

Account administrators selected for the Texas Individual Development Pilot Project will have in place procedures and policies that will include the following:

(1) Policies and procedures addressing any unqualified withdrawals made by project participants, which will include (if applicable):

(A) authorization procedures for such withdrawals that include signatures by both the account administrator and the eligible individual;

(B) notification procedures for such withdrawals to notify the applicable regional office of the Texas Department of Human Services and the applicable Local Workforce Development Board of the unqualified withdrawal and its amount within seven (7) working days after the withdrawal is made;

(C) policies that state that the eligible individual will forfeit any entitlement to the matching funds for an unqualified withdrawal; and

(D) policies that state that after two such unqualified withdrawals during the eligible individual's participation in the IDA project, the individual must negotiate with the account administrator to remain in the program.

(2) Policies and procedures that address a program participant's legal right to terminate his or her participation in the IDA project, including:

(A) policies and procedures that address a participant's termination in the project and subsequent withdrawal of the full amount of funds that he or she has deposited into his or her IDA, including any interest thereon, subject to any administrative costs and/or fees from the financial institution in which the account is held, and forfeiting entitlement to any matching funds for that account;

(B) policies and procedures for dealing with the matching funds and/or parallel accounts for such a participant's IDA, once the participant has terminated his or her participation; and

(C) policies and procedures to notify the appropriate entities of such terminations, consistent with paragraph (1)(B) of this section.

(3) Any other policies or procedures that may be required in the Request for Proposal.