

CHAPTER 800. GENERAL ADMINISTRATION

PROPOSED 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 16, 2009**, THE TEXAS WORKFORCE COMMISSION PROPOSED THE BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated Publication Date of the Proposal in the *Texas Register*: **July 3, 2009**

Estimated End of Comment Period: **August 3, 2009**

The Texas Workforce Commission (Commission) proposes the following new sections to Chapter 800, relating to General Administration:

Subchapter B. Allocations, §§800.74–800.77

The Commission proposes amendments to the following sections of Chapter 800, relating to General Administration:

Subchapter A. General Provisions, §800.2

Subchapter B. Allocations, §§800.54, 800.58, and 800.71

The Commission proposes the repeal of the following sections of Chapter 800, relating to General Administration:

Subchapter B. Allocations, §800.74 and §800.75

- PART I. PURPOSE, BACKGROUND, AND AUTHORITY
- PART II. EXPLANATION OF INDIVIDUAL PROVISIONS
- PART III. IMPACT STATEMENTS
- PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed amendments to Chapter 800 is to provide the Commission with additional flexibility in its review of underlying factors or causes for the underexpenditure of Commission-allocated funds by a Local Workforce Development Board (Board).

Additionally, the Food, Conservation, and Energy Act of 2008, enacted June 18, 2008, changed the name of the Food Stamp Program to the Supplemental Nutrition Assistance Program (SNAP). The Texas Health and Human Services Commission (HHSC), which administers the federal program, has informed the Agency that effective April 1, 2009, it will change the name of the state food stamp program to SNAP. To align with the federal and state name changes, the Commission also is changing the name of Food Stamp Employment and Training (FSE&T) to Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T).

Therefore, FSE&T references in this chapter will be changed to be consistent with federal and state revisions.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

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

SUBCHAPTER A. GENERAL PROVISIONS

The Commission proposes the following amendments to Subchapter A:

§800.2. Definitions

Section 800.2(2), the definition of allocation is clarified to ensure consistency with:

- Texas Labor Code §302.062, which specifies that Commission block grant allocations are made to local workforce development areas (workforce areas); and
- §800.51 of this chapter, which notes that Commission block grant allocations are made to workforce areas.

Section 800.2(10), the definition of FSE&T, is removed and replaced by new §800.16, which reflects the name change from FSE&T to SNAP E&T.

Certain paragraphs in this section have been renumbered to reflect additions or deletions.

SUBCHAPTER B. ALLOCATIONS

The Commission proposes the following amendments to Subchapter B:

§800.54. Food Stamp Employment and Training

Section 800.54 changes:

- the section title "Food Stamp Employment and Training" to "Supplemental Nutrition Assistance Program Employment and Training";
- the term "FSE&T" to "SNAP E&T"; and
- the term "food stamps" to "SNAP benefits."

§800.58. Child Care

Section 800.58 changes:

- the term "Food Stamp Employment and Training" to "SNAP E&T";
- the term "aged" to "ages"; and
- the term "food stamp" to "SNAP."

§800.71. General Deobligation and Reallocation Provisions

Section 800.71 changes "Food Stamp" to "Supplemental Nutrition Assistance Program."

§800.74. Deobligation of Funds

Section 800.74 is repealed and consolidated in new §800.74.

§800.74. Midyear Deobligation of Funds

The Commission provides WIA program year funds to Boards for expenditure over a two-year period. New §800.74(a) provides that the Commission may deobligate funds during the program year—or the first year of availability of WIA funds—if a workforce area is not meeting the expenditure thresholds in new §800.74(b) and (c). This information is unchanged from repealed §800.74(b)(1).

New §800.74(a)(1) specifies "midyear" as the end of months five, six, seven, or eight. The rule broadens the Commission's ability to review all relevant information that may be causing an underexpenditure of funds, except as set forth in new §800.74(c), beyond the narrow scope of repealed §800.74(b)(1) and (2). New §800.74(a)(1) affords the Commission greater flexibility to consider individual and unique circumstances in the workforce area.

New §800.74(a)(2) limits the amount that may be deobligated by the Commission to no more than the difference between a Board's actual expenditures and the amount corresponding to the relative proportion of the program year. As the midyear period is specified as the end of months five, six, seven, or eight, this new section removes reference to a three-consecutive-month period as in repealed §800.74(c).

New §800.74(a)(3) retains the exemption from deobligation for an underexpended workforce area that received a supplemental allocation or reallocation of funds from the Commission within the prior 60 days. This information remains unchanged from repealed §800.74(d)(1). However, new §800.74(a)(3) removes the exemption from deobligation for an underexpended workforce area that is achieving a sufficient per participant cost and meeting contracted performance measures, information previously located in repealed §800.74(d)(2).

New §800.74(b)(1)–(8) provides the criteria by which the Commission may deobligate the funds listed at midyear, provisions that are unchanged from repealed §800.74(a)(1).

New §800.74(c) provides the criteria by which the Commission may deobligate Workforce Investment Act (WIA) formula funds at midyear, provisions that are unchanged from repealed §800.74(a)(2)(A).

New §800.74(d)(1)–(4), previously located in repealed §800.74(f)(1)–(4), states that upon request from the Commission, a workforce area subject to deobligation of funds must submit a written justification to the Commission and provide a copy to the Board Chair, detailing the actions the workforce area will take, including:

- expanding services proportionate to available resources;
- projecting service levels and related performance;
- reporting additional obligations; or
- other factors the workforce area wants the Commission to consider.

New §800.74(e), previously located in repealed §800.74(g), states that if this section is found not to comply with federal requirements, or if related federal waivers expire, the Commission is subject to any federal requirements in effect.

§800.75. Reallocation of Funds

Section 800.75 is repealed and set forth as new §800.77.

§800.75. Second-Year WIA Deobligation of Funds

§New §800.75 sets forth the Commission's criteria for the deobligation of WIA formula funds during the second year of availability.

New §800.75(a) clarifies that in each month of the second year of WIA funds availability, the Commission may deobligate any unexpended WIA formula funds that exceed 20% of the allocation for each category of WIA formula funds for the program year, information previously located in repealed §800.74(a)(2)(B).

New §800.75(b) limits the Commission's ability to deobligate funds from a workforce area to an amount not to exceed the difference between a workforce area's actual expenditures and the unexpended funds that exceed 20% of the allocation for each category of WIA formula funds for the program year.

New §800.75(c) states that the Commission shall not deobligate funds from a workforce area that failed to meet the expenditure thresholds set forth in §800.75(a) if within 60 days prior to the potential deobligation period, a workforce area executes a contract amendment for a supplemental allocation or reallocation of funds in the same program funding category. This mirrors the provision in new §800.74(a)(3) relating to midyear deobligation of funds.

§800.76. Voluntary Deobligation of Funds

New §800.76 allows Boards to request a voluntary deobligation of funds by submitting a written request to the Commission with a copy to the Board Chair.

§800.77. Reallocation of Funds

New §800.77 pertains to a workforce area's eligibility for reallocated funds, and the factors the Commission may consider when reviewing workforce areas' requests for reallocated funds.

New §800.77(a)(1)–(9) lists the funds that the Commission may reallocate to workforce areas. This information remains unchanged from repealed §800.75(a).

New §800.77(b)(1)(A), (C), (D), and (F)–(H) sets forth the criteria for workforce areas' eligibility for child care funds (excluding unmatched federal funds that are contingent upon a workforce area securing local funds) and the funds listed in §800.77(a)(2)–(9). This information remains unchanged from repealed §800.75(b)(1)(A)–(G).

New §800.77(b)(1)(B) specifies an additional criterion. The Commission also may consider a workforce area's reported obligations when considering the workforce area's requests for available funds.

New §800.77(b)(1)(E) specifies an additional criterion. The Commission also may consider reallocating funds to workforce areas that have an established plan for working with at least one of the Governor's industry clusters, as detailed in the local Board plan.

New §800.77(c)(1), (3), (5), and (6), previously located in repealed §800.75(a)(1)–(4), provides the criteria that the Commission may consider when modifying a reallocation amount.

New §800.77(c)(2) is an additional criterion. The Commission also may consider the amount available for reallocation versus the total dollar amount of the requests, thus providing the Commission flexibility when considering Boards' reallocation requests.

New §800.77(c)(4) also provides an additional criterion. The Commission may consider the extent to which a workforce area's project supports activities related to the Governor's industry clusters.

New §800.77(d), previously located in repealed §800.75(c), is reworded to mirror new §800.74(e).

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no estimated additional costs to the state government expected as a result of enforcing or administering the rules. We cannot estimate whether there will be an additional cost to local governments (Boards) as a result of enforcing or administering the rules.

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules.

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

Enforcing or administering the rules does not have foreseeable implications relating to the cost or revenues of the state or local governments.

There is no probable economic cost to persons required to comply with the rule.

Economic Impact Statement and Regulatory Flexibility Analysis

There is no estimated adverse economic effect on small businesses.

Mark Hughes, Director of Labor Market Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Laurence M. Jones, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to enhance the accountability of and ensure the appropriate expenditure of public funds allocated to workforce areas for needed services.

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

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of Texas' 28 Boards. The Commission provided the concept paper regarding these rule amendments to the Boards for consideration and review on November 12, 2008. The Commission also conducted a conference call with Board executive directors and Board staff on November 14, 2008, to discuss the concept paper. During the rulemaking process, the Commission considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

The rules are proposed 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 proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

Chapter 800. GENERAL ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

§800.2. Definitions

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

- (1) Agency -- The unit of state government established under Texas Labor Code Chapter 301 that is presided over by the Commission and administered by the Executive Director to operate the integrated workforce development system and administer the unemployment compensation insurance program in this state as established under the Texas Unemployment Compensation Act, Texas Labor Code Annotated, Title 4, Subtitle A, as amended. The definition of "Agency" shall apply to all uses of the term in rules contained in this part, or unless otherwise defined, relating to the Texas Workforce Commission that are adopted after February 1, 2001.
- (2) Allocation -- The amount approved by the Commission for expenditures to a local workforce development area during a specified program year, according to specific state and federal requirements.
- (3) Board -- A Local Workforce Development Board created pursuant to Texas Government Code §2308.253 and certified by the Governor pursuant to Texas Government Code §2308.261. This includes such a Board when functioning as the Local Workforce Investment Board as described in the Workforce Investment Act §117 (29 U.S.C.A. §2832), including those functions required of a Youth Council, as provided for under the Workforce Investment Act §117(i). The definition of "Board" shall apply to all uses of the term in the rules contained in this part, or unless otherwise defined, relating to the Texas Workforce Commission that are adopted after February 1, 2001.
- (4) Child Care -- Child care services funded through the Commission, which may include services funded under the Child Care and Development Fund, WIA, 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.
- (5) Choices -- The employment and training activities created under §31.0126 of the Texas Human Resources Code and funded under TANF (42 U.S.C.A. 601 *et seq.*) to assist persons 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.
- (6) 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, or unless otherwise defined, relating to the Texas Workforce Commission that are adopted after February 1, 2001.

- (7) Formal Measures -- Workforce development services performance measures adopted by the Governor and developed and recommended through the Texas Workforce Investment Council (TWIC).
- (8) Employment ~~Service~~Services-- A program to match qualified job seekers with employers through a statewide network of one-stop career centers. (The Wagner-Peyser Act of 1933 (Title 29 U.S.C.~~USC~~, Chapter 4B) as amended by the Workforce Investment Act of 1998 (P.L. 105-220);)
- (9) Executive Director -- The individual appointed by the Commission to administer the daily operations of the Agency, which may include a person delegated by the Executive Director to perform a specific function on behalf of the Executive Director.
- ~~(10) Food Stamp Employment and Training (FSE&T) Activities—A program to assist food stamp recipients to become self-supporting through participation in activities which include employment, job readiness, education, and training. The activities authorized and engaged in as specified by federal Food Stamp Employment and Training statutes and regulations (7 U.S.C.A. 2011), and Chapter 813 of this title relating to Food Stamp Employment and Training.~~
- (10)~~(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 the Workforce Investment Act §116 and §189(i)(2) (29 U.S.C.A.~~USCA~~, §2831 and §2939).
- (11)~~(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 collaborate to create a seamless network of service delivery that shall enhance the availability of services through the use of all available access and coordination methods, including telephonic and electronic methods. Also referred to as the Texas Workforce Network.
- (12)~~(13)~~ Performance Measure -- An expected performance outcome or result.
- (13)~~(14)~~ Performance Standard -- A contracted numerical value setting the acceptable and expected performance outcome or result to be achieved for a performance measure, including Core Outcome Formal Measures.
- (14)~~(15)~~ Program Year -- The twelve-month period applicable to the following as specified:
 - (A) Child Care: October 1–September 30;
 - (B) Choices: October 1–September 30;

- (C) Employment ~~Service~~Services: October 1–September 30;
 - (D) ~~Supplemental Nutrition Assistance Program~~~~Food Stamp~~ Employment and Training: October 1–September 30; and
 - (E) Project RIO: October 1–September 30;
 - (F) Trade Act Services; October 1–September 30;
 - (G) Veterans' Employment and Training: October 1–September 30;
 - (H) Workforce Investment Act (WIA) Adult, Dislocated Worker, and Youth formula funds: July 1–June 30;
 - (I) WIA Alternative Funding for Statewide Activities: October 1–September 30; and
 - (J) WIA Alternative Funding for One-Stop Enhancements: October 1–September 30.
- (15)(16) Project Reintegration of Offenders (RIO) -- A program that prepares and transitions ex-offenders released from Texas Department of Criminal Justice or Texas Youth Commission incarceration into gainful employment as soon as possible after release, consistent with provisions of the Texas Labor Code, Chapter 306, Texas Government Code §2308.312, and the Memorandum of Understanding with the Texas Department of Criminal Justice and the Texas Youth Commission.
- (16) Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T) -- A program to assist SNAP recipients to become self-supporting through participation in activities that include employment, job readiness, education, and training, activities authorized and engaged in as specified by federal statutes and regulations (7 U.S.C.A. §2011), and Chapter 813 of this title relating to Supplemental Nutrition Assistance Program Employment and Training.
- (17) TANF -- Temporary Assistance for Needy Families, which may include temporary cash assistance and other temporary assistance for eligible individuals, as defined in the Personal Responsibility and Work Opportunities Reconciliation Act of 1996, as amended (7 U.S.C.A. §201.1 *et seq.*) and the Temporary Assistance for Needy Families statutes and regulations (42 U.S.C.A. §601 *et seq.*, 45 C.F.R. Parts 260–265). TANF may also include the TANF State Program (TANF SP), relating to two-parent families, which is codified in Texas Human Resources Code, Chapter 34.
- (18) Trade Act Services -- Programs authorized by the Trade Act of 1974, as amended (and 20 C.F.R. ~~CFR~~ Part 617) providing services to dislocated workers eligible for Trade benefits through Texas Workforce Centers ~~workforce centers~~.
- (19) TWIC -- Texas Workforce Investment Council appointed by the Governor pursuant to Texas Government Code §2308.052 and functioning as the State Workforce Investment Board (SWIB), as provided for under the Workforce

Investment Act §111(e) (29 U.S.C.A. §2821(e)). In addition, pursuant to the Workforce Investment Act §194(a)(5) (29 U.S.C.A. §2944(a)(5)), TWIC maintains the duties, responsibilities, powers, and limitations as provided in Texas Government Code §§2308.101–2308.105. Formerly known as the Texas Council on Workforce and Economic Competitiveness (TCWEC), any references to TCWEC when used in this part are now considered references to TWIC.

- (20) Texas Workforce Center Partner --- An entity ~~that~~^{which} carries out a workforce investment, educational, or other human resources program or activity, and ~~that~~^{which} participates in the operation of the One-Stop Service Delivery Network in a local-workforce area consistent with the terms of a memorandum of understanding entered into between the entity and the Board.
- (21) Veterans' Employment and Training -- Services established under the Jobs for Veterans Act of 2002 (P.L. 107-288, 38 U.S.C.A. §§4100, 4201, and 4301) the Disabled Veterans Outreach Program (DVOP) and the Local Veterans Employment Representative (LVER) program to provide employment services to disabled veterans, veterans of the Vietnam era, and other eligible veterans and family members.
- (22) WIA -- Workforce Investment Act (P.L. 105-220, 29 U.S.C.A. §2801 *et seq.*). References to WIA include references to WIA formula allocated funds unless specifically stated otherwise.
- (23) WIA Formula Allocated Funds -- Funds allocated by formula to workforce areas for each of the following separate categories of services: WIA Adult, Dislocated Worker and Youth (excluding the Secretary's and Governor's reserve funds and rapid response funds).

SUBCHAPTER B. ALLOCATIONS

§800.54. Supplemental Nutrition Assistance Program ~~Food Stamp~~ Employment and Training

- (a) Funds available to the Commission to provide ~~SNAP E&T~~^{SNAP} ~~Food Stamp~~ ~~Employment and Training (FSE&T)~~ services under 7 U.S.C.A. §2015(d) will be allocated to the workforce areas using a need-based formula, as set forth in subsection (b) of this section.
- (b) At least 80% of the ~~SNAP E&T~~^{SNAP} ~~FSE&T~~ funds will be allocated to the workforce areas on the basis of:
 - (1) of the relative proportion of the total unduplicated number of mandatory work registrants receiving ~~SNAP benefits~~ ~~food stamps~~ residing within the workforce area during the most recent calendar year to the statewide total unduplicated number of mandatory work registrants receiving ~~SNAP benefits~~ ~~food stamps~~;
 - (2) an equal base amount; and
 - (3) the application of a hold harmless/stop gain procedure.

- (c) No more than 10% of the funds expended as part of a workforce area's allocation shall be used for administrative costs, as defined by federal regulations and Commission policy.

§800.58. Child Care

- (a) Funds available to the Commission for child care services will be allocated to the workforce areas using need-based formulas, as set forth in this section.
- (b) Child Care and Development Fund (CCDF) Mandatory Funds authorized under the Social Security Act §418(a)(1), as amended, together with state general revenue Maintenance of Effort (MOE) Funds, Social Services Block Grant funds, TANF funds, and other funds designated by the Commission for child care (excluding any amounts withheld for state-level responsibilities) will be allocated on the following basis:
 - (1) 50% will be based on the relative proportion of the total number of children under the age of five years old residing within the workforce area to the statewide total number of children under the age of five years old, and
 - (2) 50% will be based on the relative proportion of the total number of people residing within the workforce area whose income does not exceed 100% of the poverty level to the statewide total number of people whose income does not exceed 100% of the poverty level.
- (c) CCDF Matching Funds authorized under the Social Security Act §418(a)(2), as amended, together with state general revenue matching funds and estimated appropriated receipts of donated funds, will be allocated according to the relative proportion of children under the age of 13 years old residing within the workforce area to the statewide total number of children under the age of 13 years old.
- (d) CCDF Discretionary Funds authorized under the Child Care and Development Block Grant Act of 1990 §658B, as amended, will be allocated according to the relative proportion of the total number of children under the age of 13 years old in families whose income does not exceed 150% of the poverty level residing within the workforce area to the statewide total number of children under the age of 13 years old in families whose income does not exceed 150% of the poverty level.
- (e) If ~~SNAP E&T Food Stamp Employment and Training~~ child care funding is determined to be available, then funds will be allocated among workforce areas on the basis of the relative proportion of the total number of children ~~ages~~ 6–12 years in households of mandatory ~~SNAP~~ food stamp work registrants residing within the workforce area to the statewide total number of children ~~ages~~ 6–12 years in households of mandatory ~~SNAP~~ food stamp work registrants.
- (f) The following provisions apply to the funds allocated in subsections (b)–(e) of this section:
 - (1) Sufficient funds must be used for direct child care services to ensure Commission-approved performance targets are met.

- (2) Children eligible for Transitional ~~clients~~ and Choices child care shall be served on a priority basis to enable parents to participate in work, education, or training activities.
- (3) No more than 5% of the total expenditure of funds may be used for administrative expenditures as defined in federal regulations contained in 45 Code of Federal Regulations §98.52, as may be amended unless the total expenditures for a workforce area are less than \$5,000,000. If a workforce area has total expenditures of less than \$5,000,000, then no more than \$250,000 may be used for administrative expenditures.
- (4) Each Board shall set the amount of the total expenditure of funds to be used for quality activities consistent with federal and state statutes and regulations.
- (5) The Board shall comply with any additional requirements adopted by the Commission or contained in the Board contract.
- (6) Allocations of child care funds will include applications of hold harmless/stop gain procedures.

§800.71. General Deobligation and Reallocation Provisions

- (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–~~800.77~~~~800.75~~ of this subchapter shall apply to funds provided to workforce areas under a contract between the Board and the Commission for the following categories of funding:
 - (1) Child Care;
 - (2) Choices;
 - (3) Employment ~~Service~~Services;
 - (4) ~~SNAP E&T~~Food Stamp Employment and Training;
 - (5) Project RIO;
 - (6) Trade Act Services;
 - (7) WIA Formula Allocated Funds;
 - (8) WIA Alternative Funding for Statewide Activities;~~and~~
 - (9) WIA Alternative Funding for One-Stop Enhancements~~;~~

~~§800.74. Deobligation of Funds~~

- ~~(a) The Commission may deobligate the following funds midyear, as set forth in §800.74(b):~~
 - ~~(1) Child Care (with the exception of unmatched federal Child Care funds that are contingent upon a Board securing local funds, as set forth in §800.73),~~

~~Choices, Employment Service, Food Stamp Employment and Training, Project RIO, Trade Act Services, WIA Alternative Funding for Statewide Activities, and WIA Alternative Funding for One Stop Enhancements funds: if a Board fails to achieve the expenditure of an amount corresponding to 90% or more of the relative proportion of the program year; and~~

~~(2) WIA formula allocated funds:~~

~~(A) if a Board fails to achieve the expenditure of an amount corresponding to 80% or more of the relative proportion of the program year for each category of WIA formula allocated funds; and~~

~~(B) after the end of the twelfth month following the beginning of a program year, any unexpended funds that exceed 20% of the allocation for each category of WIA formula allocated funds for the program year.~~

~~(b) For midyear deobligations during the first program year:~~

~~(1) Boards that are failing to meet the expenditure thresholds, as set forth in §800.74(a), have not achieved at least 95% of the applicable performance measures, or have not achieved a reasonable per participant cost, as set forth in §800.74(d)(2), at the end of months five, six, seven, or eight will be reviewed to determine whether they also have failed to meet such thresholds in the two previous months.~~

~~(2) Boards that have failed to meet expenditure and performance thresholds for three consecutive months, as set forth in §800.74(b)(1), may be subject to deobligation.~~

~~(c) The Commission may deobligate no more than the difference between a Board's actual expenditures as of the end of the three consecutive month period during which the Board has failed to expend the amount corresponding to the relative proportion of the program year, as set forth in §800.74(a), and the amount corresponding to the relative proportion of the program year.~~

~~(d) The Commission will not deobligate funds from a Board that failed to meet the expenditure thresholds as set forth in §800.74(a):~~

~~(1) if less than 60 days prior to the potential deobligation period, a contract amendment has been executed with the Board for a supplemental allocation or reallocation of funds in the same program category of funding; or~~

~~(2) if a Board has achieved at least 95% of the applicable performance measures and has achieved a reasonable per participant cost, as of the end of the third consecutive month during which the Board has failed to expend the amount corresponding to the relative proportion of the program year as set forth in §800.74(a). Factors that the Commission may review to determine the reasonableness of per participant costs include:~~

~~(A) the statewide cost per participant served;~~

~~(B) the Board's service levels for each category of funding, as specified in the approved Board plan;~~

~~(C) transfers or redesignations of funds;~~

- ~~(D) expenditures reported in accordance with the Agency's financial reporting requirements; and~~
- ~~(E) other local factors that may affect the cost of providing services.~~
- ~~(e) The Commission may deobligate funds if a Board is not meeting expenditure thresholds as set forth in §800.74(a), has not achieved at least 95% of the applicable performance measures, or has not achieved a reasonable per participant cost.~~
- ~~(f) A Board subject to deobligation for failure to meet the requirements set forth in §800.74(d)(2) shall submit a written justification within five working days of the date of notification from the Commission. A Board may voluntarily provide a written justification prior to receiving a formal request from the Commission. The written justification shall provide sufficient detail regarding the actions a Board will take to address its deficiencies, and may include:
 - ~~(1) expansion of services proportionate to the available resources;~~
 - ~~(2) projected service levels and related performance;~~
 - ~~(3) outstanding obligations; and~~
 - ~~(4) any other factors a Board would like the Commission to consider.~~~~
- ~~(g) To the extent this section is found not to comply with federal requirements, or should any related federal waivers expire, the Commission will be subject to federal requirements in effect, as applicable.~~

§800.74. Midyear Deobligation of Funds

- ~~(a) The Commission may deobligate funds from a workforce area during the program year if a workforce area is not meeting the expenditure thresholds set forth in subsections (b) and (c) of this section.
 - ~~(1) Workforce areas that fail to meet the expenditure thresholds set forth in subsection (b) of this section at the end of months five, six, seven, or eight of the program year (i.e., midyear) will be reviewed to determine the causes for the underexpenditure of funds, except as set forth in subsection (e) of this section.~~
 - ~~(2) The Commission shall not deobligate more than the difference between a workforce area's actual expenditures and the amount corresponding to the relative proportion of the program year.~~
 - ~~(3) The Commission shall not deobligate funds from a workforce area that failed to meet the expenditure thresholds set forth in subsections (b) and (c) of this section, if within 60 days prior to the potential deobligation period the Commission executes a contract amendment for a supplemental allocation or reallocation of funds in the same program funding category.~~~~
- ~~(b) The Commission may deobligate the following funds midyear, as set forth in subsection (a) of this section, if a workforce area fails to achieve the expenditure of an amount corresponding to 90% or more of the relative proportion of the program year:~~

- (1) Child care (with the exception of unmatched federal child care funds that are contingent upon a workforce area securing local funds, as set forth in §800.73 of this subchapter)
 - (2) Choices
 - (3) Employment Service
 - (4) SNAP E&T
 - (5) Project RIO
 - (6) Trade Act Services
 - (7) WIA Alternative Funding for Statewide Activities
 - (8) WIA Alternative Funding for One-Stop Enhancements
- (c) The Commission may deobligate WIA formula funds midyear, as set forth in subsection (a) of this section, if a workforce area fails to achieve the expenditure of an amount corresponding to 80% or more of the relative proportion of the program year for each category of WIA formula funds.
- (d) A workforce area subject to deobligation for failure to meet the requirements set forth in this section shall, upon request by the Commission, submit a written justification with a copy to the Board Chair. The written justification shall provide sufficient detail regarding the actions a workforce area will take to address its deficiencies, including:
- (1) expansion of services proportionate to the available resources;
 - (2) projected service levels and related performance;
 - (3) reporting outstanding obligations; and
 - (4) any other factors a workforce area would like the Commission to consider.
- (e) To the extent this section is found not to comply with federal requirements, or should any related federal waivers expire, the Commission will be subject to federal requirements in effect, as applicable.

~~§800.75. Reallocation of Funds~~

~~(a) Reallocation.~~

~~For reallocation of Child Care, including unmatched federal funds that are contingent upon a Board securing local funds, Choices, Employment Service, Food Stamp Employment and Training, Project RIO, Trade Act Services, WIA Formula Allocated Funds, WIA Alternative Funding for Statewide Activities, and WIA Alternative Funding for One-Stop Enhancements funds provided by the Commission, the Commission may reallocate funds to an eligible workforce area based on the applicable method of allocation, as set forth in this subchapter and may modify the amount to be reallocated by considering the following:~~

- ~~(1) the amount specified in a Board's written request for additional funds;~~
- ~~(2) the demonstrated ability of a Board to effectively expend funds to address the need for services in the workforce area;~~
- ~~(3) Board performance during the current and prior program year; and~~
- ~~(4) related factors as necessary to ensure that funds are fully utilized.~~

~~(b) Eligibility.~~

- ~~(1) For a workforce area to be eligible for a reallocation of Child Care (excluding unmatched federal funds that are contingent upon a Board securing local funds), Choices, Employment Services, Food Stamp Employment and Training, Project RIO, Trade Act Services, WIA Formula Allocated Funds, WIA Alternative Funding for Statewide Activities, and WIA Alternative Funding for One Stop Enhancements funds, the Commission may consider whether a Board:~~

- ~~(A) has met targeted expenditure levels as required by §800.74(a) and §800.74(b) of this subchapter, as applicable, for that period;~~

- ~~(B) has not expended more than 100% of the workforce area's allocation for the category of funding;~~

- ~~(C) has demonstrated that expenditures conform to cost category limits for funding;~~

- ~~(D) has demonstrated the need for and ability to use additional funds;~~

- ~~(E) is current on expenditure reporting;~~

- ~~(F) is current with all single audit requirements; and~~

- ~~(G) is not under sanction.~~

- ~~(2) For a workforce area to be eligible for a reallocation of unmatched federal Child Care funds that are contingent upon a Board securing local funds, the Commission may consider whether a Board has met the level for securing and completing local match requirements set out in §800.73(a) of this subchapter, relating to Expenditure, Local Match, and Obligation Levels. The Commission may also consider the factors listed in paragraph (1) of this section that apply, including factors referenced in subparagraphs (B)-(G).~~

- ~~(c) To the extent this section does not comply with federal requirements, or should any related federal waivers expire, the Commission will be subject to federal requirements in effect at that time.~~

§800.75. Second-Year WIA Deobligation of Funds

- (a) In each month of the second year in which the WIA formula funds are available, the Commission may deobligate funds if a workforce area's unexpended WIA formula funds exceed 20% of the allocation for each category of WIA formula funds for the program year.

- (b) The Commission shall not deobligate more than the difference between a workforce area's actual expenditures and the amount of unexpended funds that exceed 20% -of the allocation for each category of WIA formula funds for the program year.
- (c) The Commission shall not deobligate funds from a workforce area that failed to meet the expenditure thresholds set forth in subsection (a) of this section if within 60 days prior to the potential deobligation period, the Commission executes a contract amendment for a supplemental allocation or reallocation of funds in the same program funding category.

§800.76. Voluntary Deobligation of Funds

To request a voluntary deobligation of funds allocated to the workforce area, a workforce area's executive director shall submit a written request to the Commission with a copy to the Board Chair.

§800.77. Reallocation of Funds

- (a) Reallocation. A workforce area may be eligible for reallocation of the following funds allocated by the Commission:
 - (1) Child care (including unmatched federal child care funds that are contingent upon a workforce area securing local funds)
 - (2) Choices
 - (3) Employment Service
 - (4) SNAP E&T
 - (5) Project RIO
 - (6) Trade Act Services
 - (7) WIA Formula Funds
 - (8) WIA Alternative Funding for Statewide Activities
 - (9) WIA Alternative Funding for One-Stop Enhancements
- (b) Eligibility.
 - (1) For a workforce area to be eligible for a reallocation of child care funds (excluding unmatched federal funds that are contingent upon a workforce area securing local funds), and the funds set forth in subsection (a)(2)–(9) of this section, the Commission may consider whether a workforce area:
 - (A) has met targeted expenditure levels as required by §800.74(a) of this subchapter, as applicable, for that period;
 - (B) has not expended or obligated more than 100% of the workforce area's allocation for the category of funding;

- (C) has demonstrated that expenditures conform to cost category limits for funding;
 - (D) has demonstrated the need for and ability to use additional funds;
 - (E) has an established plan for working with at least one of the Governor's industry clusters, as specified in the local Board plan;
 - (F) is current on expenditure reporting;
 - (G) is current with all single audit requirements; and
 - (H) is not under sanction.
- (2) For a workforce area to be eligible for a reallocation of unmatched federal child care funds that are contingent upon a workforce area securing local funds, the Commission may consider:
- (A) whether a workforce area has met the level for securing and completing local match requirements set out in §800.73(a) of this subchapter, relating to Expenditure, Local Match, and Obligation Level; and
 - (B) the applicable factors listed in paragraph (1) of this subsection, including factors in paragraph (1)(B)–(H) of this subsection.
- (c) The Commission may reallocate funds to an eligible workforce area based on the applicable method of allocation, as set forth in this subchapter, and may modify the amount to be reallocated by considering the following:
- (1) the amount specified in a workforce area's written request for additional funds;
 - (2) the amount available for reallocation versus the total dollar amount of requests;
 - (3) the demonstrated ability of a workforce area to effectively expend funds to address the need for services in the workforce area;
 - (4) the extent to which the project supports activities related to the Governor's industry clusters;
 - (5) the workforce area's performance during the current and prior program year; and
 - (6) related factors, as necessary, to ensure that funds are fully used.
- (d) To the extent this section is found not to comply with federal requirements, or should any related federal waivers expire, the Commission will be subject to federal requirements in effect, as applicable.