

CHAPTER 800. GENERAL ADMINISTRATION

PROPOSED RULES TO BE PUBLISHED IN THE *TEXAS REGISTER*. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE OFFICE OF THE SECRETARY OF STATE.

ON **JULY 2, 2024**, THE TEXAS WORKFORCE COMMISSION PROPOSED THE RULES BELOW WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated Publication Date of the Proposal in the *Texas Register*: **July 19, 2024**

Estimated End of Comment Period: **August 19, 2024**

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

Subchapter B. Allocations, §§800.52, 800.63, 800.71, 800.74, 800.75, and 800.77.

TWC proposes the repeal of the following section of Chapter 800, relating to General Administration:

Subchapter B. Allocations, §800.65

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 800 rule change is to amend Subchapter B, Allocations, to: --update rule language to conform with current federal program requirements, particularly those relating to the Workforce Innovation and Opportunity Act (WIOA); and --repeal §800.65 relating to Project Reintegration of Offenders (Project RIO) to align with the Commission's repeal of Texas Administrative Code (TAC), Title 40, Chapter 847, Project RIO Employment Activities and Support Services. Though Project RIO is no longer operational, Local Workforce Development Boards (Boards) continue their ongoing efforts to serve ex-offenders through other program activities and services, as appropriate.

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 B. ALLOCATIONS

TWC proposes the following amendments to Subchapter B:

§800.52. Definitions

Section 800.52 is amended to align language and references with current federal programs.

§800.63. Workforce Investment Act (WIA) Allocations

Section 800.63 is amended to align language with current federal programs and update statutory references. Section 800.63(i) is amended, and (j) and (k) are removed, to align WIOA statewide

funding methodologies with federal regulations. Removal of subsection (k) further clarifies the Commission's ability to use and transmit statewide funds to Boards as needed, including use of funds to address emerging needs in regions throughout Texas.

Section 800.63 is amended to change the section name from "Workforce Investment Act (WIA) Allocations" to "Workforce Innovation and Opportunity Act (WIOA) Allocations."

§800.65. Project Reintegration of Offenders

Section 800.65 is repealed to align with the Commission's repeal of Chapter 847, Project RIO Employment Activities and Support Services.

§800.71. General Deobligation and Reallocation Provisions

Section 800.71 is amended to remove inactive programs and add WIOA formula funding. Additionally, statewide funds references are removed from deobligation and reallocation processes, enhancing statutory flexibility provided to the Commission in determining use of these funds, and further aligning rule with federal regulations.

§800.74. Midyear Deobligation of Funds

Section 800.74 is amended to remove inactive programs. Additionally, statewide funds references are removed from deobligation and reallocation processes, enhancing statutory flexibility provided to the Commission in determining use of these funds, and further aligning rule with federal regulations.

§800.75. Second-Year WIA Deobligation of Funds

Section 800.75 is amended to align language with current federal programs.

Section 800.75 is amended to change the section name from "Second-Year WIA Deobligation of Funds" to "Second-Year WIOA Deobligation of Funds."

§800.77. Reallocation of Funds

Section 800.77 is amended to remove inactive programs and include WIOA formula funding. Additionally, statewide funds references are removed from deobligation and reallocation processes, enhancing statutory flexibility provided to the Commission in determining use of these funds, and further aligning rule with federal regulations.

PART III. IMPACT STATEMENTS

Chris Nelson, 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 additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

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

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

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

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

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

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

Takings Impact Assessment

Under Texas Government Code §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Assessment for the proposed rulemaking action under Texas Government Code §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to amend Subchapter B, Allocations, to align with current federal program requirements, primarily those relating to WIOA, and to repeal §800.65, relating to Project RIO, to align with the Commission's repeal of 40 TAC, Chapter 847, Project RIO Employment Activities and Support Services.

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

Government Growth Impact Statement

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

- will not create or eliminate a government program;
- will not require the creation or elimination of employee positions;
- will not require an increase or decrease in future legislative appropriations to TWC;
- will not require an increase or decrease in fees paid to TWC;
- will not create a new regulation;

- will not expand, limit, or eliminate an existing regulation;
- will not change the number of individuals subject to the rules; and
- will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

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

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

Mary York, 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 availability of Commission-approved initiatives by removing self-imposed agency restrictions for Boards throughout Texas.

PART IV. COORDINATION ACTIVITIES

The proposed amendments update TWC rules to align with federal program requirements under WIOA and the Commission's repeal of 40 TAC, Chapter 847, Project RIO Employment Activities and Support Services. The public will have an opportunity to comment on these proposed rules when they are published in the *Texas Register* as set forth below.

PART V. PUBLIC COMMENTS

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov and must be received no later than August 19, 2024.

PART VI. STATUTORY AUTHORITY

The proposed rules implement provisions of WIOA by making conforming changes to TWC rules to align with current federal program requirements.

The rules are proposed under Texas Labor Code §301.0015(a)(6) and §302.002(d), which provide TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The repeal of §800.65 is proposed under Texas Labor Code §301.0015(a)(6) and §302.002(d), which provide TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The repeal relates to Texas Labor Code, particularly Chapters 301, 302, and 306; Texas Education Code, Chapter 19; and Texas Government Code, Chapter 552.

CHAPTER 800. GENERAL ADMINISTRATION

SUBCHAPTER B. ALLOCATIONS

§800.52. Definitions.

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

- (1) Accrued Expenditures--Charges incurred during a given period for goods and tangible property received and services performed that cause decreases in net financial resources.
- (2) All-Family Participation Rate--The percentage of all families receiving [Temporary Assistance for Needy Families \(TANF\)](#) benefits that a state must engage in an approved work activity for a specified number of hours per week as provided by [Title IV, Part A, §407 of the Social Security Act \(42 USC §607\)](#) ~~the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, §407, as amended.~~
- (3) Contract Closeout Settlement Package--Financial, performance, and other reports required as a condition of the contract, which must be submitted when one of the following conditions is met:
 - (A) the contract has expired;
 - (B) all available funds for the contract period have been paid out;
 - (C) all accrued expenditures chargeable to the specific contract have been incurred; or
 - (D) the period of available funds has expired or been terminated.
- (4) Contract Period--The length of time in which a contract for allocated funds between the Commission and a [Local Workforce Development Board \(Board\)](#) or an [Adult Education and Literacy \(AEL\)](#) grant recipient is in effect and during which funds may be expended for a specified purpose, unless prohibited by a federal grantor agency. A contract period longer than a program year shall be specified under the terms of a properly executed contract.
- (5) Deobligation--An action adopted by the Commission to decrease an amount for a specific program and contract period in a contract with a Board or an AEL grant recipient for allocated funds; on the basis of provisions as set forth in §§800.73, 800.74, 800.78, and 800.79 of this subchapter.

- (6) Equal Base Amount--An amount equivalent to .10 percent (one-tenth of one percent) of a total allocation, which shall be provided equally to each [local workforce development area](#) (workforce area).
- (7) Hold Harmless/Stop Gain--A procedure that [ensures](#) ~~assures~~ that a relative proportion of an allocation to a workforce area is not below 90 percent of the corresponding proportion for the past two years, or that the current year proportion is not above 125 percent of the prior two-year relative proportion.
- (8) Monthly expenditure report--A written or electronically submitted report by a Board or an AEL grant recipient that contains information regarding services for each category of funding allocated by the Commission, and in which the Board or an AEL grant recipient lists expenditures and obligations by category of funding.
- (9) Obligation--A debt established by a legally binding contract, letter of agreement, sub-grant award, or purchase order, which has been executed prior to the end of a contract period, for goods and services provided by the end of the contract period, and which will be liquidated 60 calendar days after the end of ~~the~~ a contract period, unless such definition is superseded by federal requirements.
- (10) Relative proportion of the program year--The corresponding part of the program year that is used to compare expenditures. That is, if 50 percent of the program year has transpired, then the relative proportion of the program year is 50 percent.
- (11) [WIOA](#) ~~WIA~~ Formula Allocated Funds--Funds allocated by formula to workforce areas for each of the following separate categories of [Workforce Innovation and Opportunity Act \(WIOA\) Title I](#) funding: ~~WIA~~ Adult, Dislocated Worker, and Youth.

§800.63. Workforce [Innovation and Opportunity Investment Act \(WIOA\)](#) ~~(WIA)~~ Allocations.

- (a) Definitions. The following words and terms when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.
 - (1) Area of substantial unemployment--As defined in [WIOA](#) ~~WIA §127(b)(2)(B) (29 U.S.C.A. §2852(b)(2)(B))~~ and [WIA §132\(b\)\(1\)\(B\)\(v\)\(III\) \(29 USC §3172\(b\)\(1\)\(B\)\(v\)\(III\)\)](#) ~~(29 U.S.C.A. §2862(b)(1)(B)(v)(III))~~.
 - (2) Disadvantaged adult--As defined in [WIOA §132\(b\)\(1\)\(B\)\(v\)\(IV - V\) \(29 USC §3172\(b\)\(1\)\(B\)\(v\)\(IV - V\)\)](#) ~~WIA §132(b)(1)(B)(v)(IV) (29 U.S.C.A. §2862(b)(1)(B)(v)(IV))~~.

- (3) Disadvantaged youth--As defined in WIOA ~~WIA~~ §127(b)(2)(C) (29 USC §31622(b)(2)(C)) (~~29 U.S.C.A. §2852(b)(2)(C)~~).
- (b) Scope and Authority. Funds available to the Commission under Title I of WIOA ~~WIA~~ for youth activities, adult employment and training activities, and dislocated worker employment and training activities shall be allocated to workforce areas or reserved for statewide activities in accordance with:
- (1) the provisions of prior consistent state law as authorized by WIOA ~~§193(a)(1)(A) (29 USC §3253(a)(1)(A))~~ ~~WIA §194(a)(1)(A) (29 U.S.C.A. §2944(a)(1)(A))~~, including, but not limited to, Texas Labor Code §302.062, as amended, and Subchapter B of this title (~~relating to Allocations and Funding~~);
 - (2) ~~the~~ WIOA ~~WIA~~ and related federal regulations as amended; and
 - (3) the WIOA ~~WIA~~ State Plan.
- (c) Reserves and Allocations for Youth and Adult Employment and Training Activities. The Commission shall reserve no more than 15 percent % and shall allocate to workforce areas at least 85 percent % of the youth activities and adult employment and training activities allotments from the US ~~United States~~ Department of Labor.
- (d) Reserves and Allocations for Dislocated Worker Employment and Training Activities. The Commission shall allocate the dislocated worker employment and training allotment in the following manner:
- (1) reserve no more than 15 percent % for statewide workforce investment activities;
 - (2) reserve no more than 25 percent % for state-level ~~state-level~~ rapid response and additional local assistance activities, and determine the proportion allocated to each activity; and
 - (3) allocate at least 60 percent % to workforce areas.
- (e) State-Adopted ~~State-Adopted~~ Elements, Formulas, and Weights. The Commission shall implement the following elements, formulas, and weights adopted for Texas in the WIOA ~~WIA~~ State Plan in allocating WIOA ~~WIA~~ funds to workforce areas.
- (1) WIOA ~~WIA~~ adult employment and training activities funds not reserved by the Commission under §800.63(c) of this section shall be allocated to the workforce areas as provided in WIOA §133(b)(2) (29 USC §3173(b)(2)) ~~WIA §132(b)(1)(B) and (29 U.S.C.A. §2863(b)(2))~~ based on the following:
 - (A) 33-1/3 ~~33-1/3~~ percent on the basis of the relative number of unemployed individuals in areas of substantial unemployment in each workforce area,

- compared to the total number of unemployed individuals in areas of substantial unemployment in the state State;
- (B) 33-1/3 33-1/3 percent on the basis of the relative excess number of unemployed individuals in each workforce area, compared to the total excess number of unemployed individuals in the state State; and
 - (C) 33-1/3 33-1/3 percent on the basis of the relative number of disadvantaged adults in each workforce area, compared to the total number of disadvantaged adults in the state State.
- (2) WIOA WIA dislocated worker employment and training activities funds not reserved by the State of Texas under subsection (d) §800.63(d) of this section shall be allocated to the workforce areas as provided in WIOA WIA §133(b)(2) (29 USC §3173(b)(2)) (~~29 U.S.C.A. §2863(b)(2)~~) based on the following factors:
- (A) insured unemployment data;
 - (B) ~~average~~ unemployment concentrations;
 - (C) plant closings and mass layoff ~~Worker Adjustment and Retaining Notification Act (29 U.S.C.A. §2101 et seq.)~~ data;
 - (D) declining industries data;
 - (E) farmer-rancher economic hardship data; and
 - (F) long-term unemployment data.
- (3) WIOA WIA youth activities funds not reserved by the Commission under §800.63(c) of this section shall be allocated to the workforce areas as provided in WIOA WIA §128(b)(2) (29 USC §3163(b)(2)) (~~29 U.S.C.A. §2853(b)(2)~~) based on the following:
- (A) 33-1/3 33-1/3 percent on the basis of the relative number of unemployed individuals in areas of substantial unemployment in each workforce area, compared to the total number of unemployed individuals in all areas of substantial unemployment in the state State;
 - (B) 33-1/3 33-1/3 percent on the basis of the relative excess number of unemployed individuals in each workforce area, compared to the total excess number of unemployed individuals in the state State; and

- (C) ~~33-1/3~~ 33-1/3 percent on the basis of the relative number of disadvantaged youth in each workforce area, compared to the total number of disadvantaged youth in the state ~~State~~.
- (f) In making allocations of WIOA ~~WIA~~ formula funds, the Commission will apply minimum funding ~~hold harmless~~ procedures, as set forth in federal regulations (20 CFR 683.125 ~~667.135~~).
- (g) No more than 10 percent ~~%~~ 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.
- (h) Reserved Funds. The Commission shall make available the funds reserved under subsection (c) and (d)(1) ~~§§800.63(c) and 800.63(d)(1)~~ of this section to provide required and, if funds are available, allowable statewide activities as outlined in WIOA §129(b) and §134(a) ~~(29 USC §3164 and §3174(a))~~ ~~WIA §§129 and 134~~ ~~(29 U.S.C.A. §§2854 and 2864)~~.
- (i) The Commission may allocate such proportion of available WIOA Statewide ~~WIA Alternative~~ Funding ~~for Statewide Activities~~ as it determines appropriate, ~~utilizing a distribution methodology that is based on the proportionality of all amounts of WIA formula funds allocated during the same program year, as well as an equal base amount.~~
- ~~(j) The Commission may allocate such amounts of available WIA Alternative Funding for Statewide Activities as funding for One-Stop Enhancements, as it determines appropriate.~~
- ~~(k) Expenditure Level for Statewide Activity Funding. A Board shall demonstrate an 80 percent expenditure level of prior year WIA allocated funds in order to be eligible to receive WIA Alternative Funding for Statewide Activities and WIA Alternative Funding for One-Stop Enhancements. The Commission may reduce the amount of WIA Alternative Funding for Statewide Activities and WIA Alternative Funding for One-Stop Enhancements if a Board fails to achieve an 80 percent expenditure level of prior year WIA formula allocated funds.~~

~~§800.65. Project Reintegration of Offenders.~~

- ~~(a) Funds available to the Commission to provide Project Reintegration of Offenders (Project RIO) services shall be allocated to workforce areas using a need-based formula, as set forth in subsection (b) of this section.~~
- ~~(b) At least 80 percent of the Project RIO funds will be allocated to workforce areas on the basis of:~~

- ~~(1) the relative proportion of the total unduplicated number of parolees residing within the workforce area during the most recent calendar year to the statewide total unduplicated number of parolees;~~
- ~~(2) an equal base amount; and~~
- ~~(3) the application of a hold harmless/stop gain procedure.~~
- ~~(c) No more than 10 percent 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.~~

§800.71. 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 - 800.80 of this subchapter shall apply to funds provided to workforce areas under a contract between the Board or an AEL grant recipient and the Commission for the following categories of funding:
 - (1) Adult Education and Literacy
 - (2) Child Care
 - (3) Choices
 - (4) Employment Service
 - (5) SNAP E&T
 - ~~(6) Project RIO~~
 - ~~(7) WIA Alternative Funding for Statewide Activities~~
 - ~~(8) WIA Alternative Funding for One-Stop Enhancements~~
 - (6) WIOA Formula Funds

§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 subsection (b) 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 (~~that is, i.e.,~~ midyear) will be reviewed to determine the causes for the under expenditure of funds, except as set forth in subsection (d) 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 subsection (b) 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 percent 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) WIA Alternative Funding for Statewide Activities~~
 - ~~(7) WIA Alternative Funding for One-Stop Enhancements~~
- (c) 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.
- (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.

§800.75. Second-Year WIOA ~~WIA~~ Deobligation of Funds.

- (a) In each month of the second year in which the WIOA ~~WIA~~ formula funds are available, the Commission may deobligate funds if a workforce area's unobligated balance of WIOA ~~WIA~~ formula funds exceeds 20 percent of the allocation for each category of WIOA ~~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 unobligated funds that exceed 20 percent of the allocation for each category of WIOA ~~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.

§800.77. 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~~
 - (5)(6) WIOA ~~WIA~~ Formula Funds
 - ~~(7) WIA Alternative Funding for Statewide Activities~~

~~(8) — 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 \(a\)\(2\) - \(5\)](#) ~~subsection (a)(2) — (8)~~ 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 percent 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](#) ~~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; 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](#) ~~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.