

1 **CHAPTER 800. GENERAL ADMINISTRATION**

2
3 **ADOPTED RULES WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS**
4 **REGISTER. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS**
5 **SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE TEXAS REGISTER.**

6
7 **ON FEBRUARY 4, 2014, THE TEXAS WORKFORCE COMMISSION ADOPTED THE**
8 **BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS REGISTER.**

9
10 Estimated date of publication in the *Texas Register*: February 21, 2014
11 The rules will take effect: February 24, 2014

12
13 The Texas Workforce Commission (Commission) adopts the following new sections to Chapter
14 800, relating to General Administration, *without* changes, as published in the November 29,
15 2013, issue of the *Texas Register* (38 TexReg 8590):

16
17 Subchapter B. Allocations, §800.68 and §§800.78 - 800.80

18
19 The Commission adopts amendments to the following sections of Chapter 800, relating to
20 General Administration, *without* changes, as published in the November 29, 2013, issue of the
21 *Texas Register* (38 TexReg 8590):

22
23 Subchapter A. General Provisions, §800.2

24 Subchapter B. Allocations, §800.51, §800.52, §800.71, and §800.72

25
26 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

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

29
30 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

31 Senate Bill (SB) 307, enacted by the 83rd Texas Legislature, Regular Session (2013), added
32 Texas Labor Code, Chapter 315, which transferred adult education and literacy (AEL) programs
33 from the Texas Education Agency (TEA) to the Commission no later than January 1, 2014.

34
35 SB 307 mandates that the Commission:

- 36 --develop, administer, and support a comprehensive statewide adult education program and
- 37 coordinate related federal and state programs for the education and training of adults;
- 38 --develop the mechanism and guidelines for the coordination of comprehensive adult education
- 39 and related skills training services for adults with other entities, including public agencies and
- 40 private organizations, in planning, developing, and implementing related programs;
- 41 --administer adult education funding;
- 42 --prescribe rules and standards for teacher certification and accreditation; and
- 43 --develop a standardized assessment mechanism, and monitor and evaluate educational and
- 44 employment outcomes of students who participate in AEL programs.

1 In addition, SB 307 mandates that the Agency use a competitive procurement process to award
2 contracts to service providers of local education programs. To complete a competitive
3 procurement and have contracts in place by July 2014, a January 2014 target date has been set
4 for the adoption of new Chapter 805, regarding AEL programs.
5

6 Further, to fully incorporate AEL programs into the Agency's administrative oversight
7 framework, amendments are necessary in Chapter 802, regarding Integrity of the Texas
8 Workforce System. To ensure a seamless transition of rules, the Chapter 802 amendments and
9 new Chapter 805 are adopted concurrently with this rulemaking.
10

11 To better understand the major issues currently facing adult education, the Commission held a
12 series of nine public meetings across the state to hear from stakeholders concerning the transfer
13 of the AEL programs from TEA to the Agency, and to gather input about what is currently
14 working well and where there is opportunity for improvement. AEL stakeholder communication
15 has continued throughout the transition, and the Commission greatly values the thoughts,
16 recommendations, and suggestions provided by the AEL stakeholder community.
17

18 The purpose of the adopted Chapter 800 amendments is to:

19 --set forth rules for the AEL program regarding:

20 --allocations;

21 --midyear deobligation of funds;

22 --voluntary deobligation of funds; and

23 --make necessary technical changes.
24
25

26 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND** 27 **RESPONSES**

28 (Note: Minor editorial changes are made that do not change the meaning of the rules and,
29 therefore, are not discussed in the Explanation of Individual Provisions.)
30

31 **SUBCHAPTER A. GENERAL PROVISIONS**

32 **The Commission adopts the following amendments to Subchapter A:**
33

34 **§800.2. Definitions**

35 New §800.2(1) defines "Adult Education and Literacy (AEL)" as services designed to provide
36 adults with sufficient basic education that enables them to effectively:

37 --(A) acquire the basic educational skills necessary for literate functioning;

38 --(B) participate in job training and retraining programs;

39 --(C) obtain and retain employment; and

40 --(D) continue their education to at least the level of completion of secondary school and
41 preparation for postsecondary education.
42

43 New §800.2(15)(J) defines the AEL program year as July 1 - June 30.
44

45 Certain paragraphs in this section have been renumbered to accommodate additions.
46

1 **SUBCHAPTER B. ALLOCATIONS**

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

3
4 **§800.51. Scope and Purpose**

5 Section 800.51(b) adds "AEL grant recipient with an approved contract with the Agency" as an
6 entity subject to the provisions regarding scope and purpose of this subchapter.

7
8 Section 800.51(c) adds "an AEL grant recipient" as an entity with which the Commission will
9 negotiate allocated amounts for contract periods of less than a complete year, based on the
10 remaining months of the program year.

11
12 **§800.52. Definitions**

13 Section 800.52(4) adds "an AEL grant recipient" to the definition of "contract period."

14
15 Section 800.52(5) adds "an AEL grant recipient" to the definition of "deobligation."

16
17 Section 800.52(8) adds "an AEL grant recipient" to the definition of "monthly expenditure
18 report."

19
20 **New §800.68. Adult Education and Literacy**

21 New §800.68 sets forth the allocation methodology for AEL funds. SB 307 provides that funds
22 may be allocated pursuant to a need-based formula that ensures compliance with federal
23 requirements and also achieves integrated education and training. In addition, stakeholders
24 expressed support for the development of strategies to advance the linkage between adult
25 education and workforce training, as well as the use of innovation in the delivery, support, and
26 expansion of AEL services in Texas.

27
28 Historically, TEA has only reserved federal funds to support state administration and leadership
29 activities. Federal state leadership funds may be used to support or facilitate linkages between
30 adult education and training, including professional development and technical assistance,
31 program coordination and integration, and coordination with existing support services, such as
32 transportation and child care. However, these funds specifically cannot be used for the delivery
33 of technical skills training.

34
35 Each year, after funds had been set aside for state administration and leadership purposes, TEA
36 allocated state and federal AEL funds to grantees largely based upon prior funding levels,
37 proportionate share of need, and performance. Each grantee's total allocation comprised a base
38 allocation and a performance allocation. Historically, base allocations remained constant from
39 year to year while performance allocations varied based on individual program performance.
40 Stakeholders expressed concerns that the allocation formulas did not truly determine
41 proportionate share of need, were difficult to understand, and included overly complex
42 performance methodology.

43
44 It is the Commission's intent to provide a clear, easily understood allocation methodology in rule
45 to alleviate these concerns and to clarify any issues surrounding transparency of the methodology
46 or the logic of the distribution of available funds.

1
2 Based on legislative authorization and stakeholder input, there is a clear need to fund the
3 development and piloting of innovative methods for delivering services, including the
4 identification of effective uses of technology. Coupled with ensuring that funding is available to
5 meet SB 307's expectation that integrated adult education and skills training models be
6 developed, the rules provide that in addition to the federal funds allowed for state leadership and
7 administration--12.5 percent for state leadership activities and 5 percent for administration--a
8 maximum amount of state adult education funds and federal Temporary Assistance for Needy
9 Families (TANF) funds also may be used for those purposes. Consistent with other workforce
10 funding sources, an amount not to exceed 20 percent of state and federal TANF funds can be
11 reserved for state administration and leadership activities.

12
13 The Commission recognizes that local workforce development areas (workforce areas) will
14 require a meaningful investment in capacity-building efforts to support the seamless alignment of
15 adult education and literacy and technical training for industry certifications and
16 degrees. Capacity-building efforts such as curriculum development, technical assistance,
17 professional development, and demonstration projects using innovative concurrent training
18 models will support local system change and alignment. The Commission's goals for
19 investments in technology and other capacity-building efforts from a statewide perspective are
20 increases in direct service delivery over time and improvements in the overall outcomes for
21 students. Thus, the Commission believes that reserving an amount not to exceed 20 percent of
22 state and federal TANF funds may be needed for state leadership purposes to adequately support
23 these efforts.

24
25 For federal Adult Education and Family Literacy Act (AEFLA) state grant funds, administrative
26 costs are limited to 5 percent of the amounts provided to AEL service providers, unless there is
27 effective justification for the application of the Special Rule in AEFLA §233(b). For state AEL
28 matching funds and federal TANF funds included in the AEL program, administrative costs will
29 be limited to 15 percent of amounts provided to AEL service providers.

30
31 New §800.68 sets forth the allocation methodologies for both federal and state AEL funds,
32 federal English Literacy/Civics (EL/Civics) funds, federal TANF funds, and state general
33 revenue appropriated as TANF maintenance-of-effort, after setting aside funds for state
34 administration and state leadership. The methodologies mirror the federal methodologies used to
35 allocate funds to the states, as applicable. Texas Labor Code §302.062 provides that if the
36 Commission block grants funds for workforce training, employment services, and support
37 services--and if the funds are allocated to the state through the application of established
38 formulas--then the Commission must allocate amounts available across the state to workforce
39 areas (which are geographic constructs and are not synonymous with Local Workforce
40 Development Boards (Boards)) using the same formula used to provide the funds to the state.
41 This is the practice followed for most of the Commission's block-granted programs. The
42 Commission is proposing the block granting of AEL funds to the workforce areas based
43 precisely on the methodology and data the U.S. Department of Education's Office of Vocational
44 and Adult Education (OVAE) uses to allocate the funds to Texas. A proportion of these
45 allocations will become available through the achievement of performance benchmarks, which
46 will reward the performance of AEL service providers.

1
2 OVAE provides federal AEFLA state grant funds to states using a 90 percent "hold-harmless"
3 procedure (i.e., the proportion of the state grant to the total of all state grants is at least 90 percent
4 of the prior year's proportion), and the Commission proposes allocating AEL funds using a hold-
5 harmless procedure. (Additionally, Texas Labor Code §302.062 provides that the 90 percent
6 hold-harmless provision applies to block grant allocations.)
7

8 New §800.68(a) states that AEL funds available to the Commission to provide services under
9 AEFLA, Workforce Investment Act Title II, together with associated state general revenue
10 matching funds and federal TANF funds--along with any state general revenue funds
11 appropriated as TANF maintenance-of-effort--will be used by the Commission as set forth in
12 subsections (b) - (f) of this section.
13

14 New §800.68(b) provides that at least 82.5 percent of the federal funds constituting the total state
15 award of AEFLA state grants--including amounts allotted to the eligible agency having a state
16 plan, as provided by AEFLA §211(c) and amounts provided to the eligible agency under §243
17 for EL/Civics--will be allocated by the Commission to the workforce areas. From the amount
18 allotted to the eligible agency having a state plan, as provided by AEFLA §211(c), the
19 Commission will allocate amounts to the workforce areas according to the established federal
20 formula, as follows:
21

22 --(1) 100 percent will be based on:

23 --(A) the relative proportion of individuals residing within each workforce area who are at
24 least 18 years of age, do not have a secondary school diploma or its recognized
25 equivalent, and are not enrolled in secondary school, during the most recent period
26 for which statistics are available;

27 --(B) an equal base amount; and

28 --(C) the application of a hold-harmless procedure (for any program year after Fiscal Year
29 (FY) 2015).

30 --(2) No more than 5 percent of the funds expended as part of this workforce area allocation
31 must be used for administrative costs, as defined by AEFLA, provided, however, that the
32 Special Rule outlined in AEFLA §233(b) must apply with effective justification, as
33 appropriate.

34 --(3) No more than 10 percent of this allocation must be available for expenditure within each
35 workforce area on the basis of the achievement of performance benchmarks, as set forth in
36 subsection (f) of this section.

37 New §800.68(c) stipulates that at least 80 percent of the state general revenue matching funds
38 associated with the allotment of federal funds to the eligible agency having a state plan, as
39 provided by AEFLA §211(c), will be allocated by the Commission to the workforce areas
40 according to the established federal formula, as follows:
41

42 --(1) 100 percent will be based on:

43 --(A) the relative proportion of individuals residing within each workforce area who are at
44 least 18 years of age, do not have a secondary school diploma or its recognized
45 equivalent, and are not enrolled in secondary school, during the most recent period
46 for which statistics are available;

--(B) an equal base amount; and

- 1 --(C) the application of a hold-harmless procedure (for any program year after FY 2015).
2 --(2) No more than 15 percent of the funds expended as part of this workforce area allocation
3 must be used for administrative costs, as defined by Commission policy.
4 --(3) No more than 10 percent of this allocation must be available for expenditure within each
5 workforce area on the basis of the achievement of performance benchmarks, as set forth in
6 subsection (f) of this section.
7

8 New §800.68(d) provides that at least 82.5 percent of the federal funds provided to the eligible
9 agency from amounts under AEFLA §243 for EL/Civics will be allocated by the Commission
10 among the workforce areas according to the established federal formula, as follows:

11 --(1) The relative proportion based on:

- 12 --(A) 65 percent of the average number of legal permanent residents during the most recent
13 10-year period, available from U.S. Citizenship and Immigration Services data; and
14 --(B) 35 percent of the average number of legal permanent residents during the most
15 recent three-year period, available from U.S. Citizenship and Immigration Services
16 data;

17 --(2) a base amount of 1 percent for each workforce area; and

18 --(3) the application of a hold-harmless procedure (for any program year after FY 2015).

19 --(4) No more than 5 percent of the funds expended as part of this workforce area allocation must
20 be used for administrative costs, as defined by AEFLA; and

21 --(5) No more than 10 percent of this allocation must be available for expenditure within each
22 workforce area on the basis of the achievement of performance benchmarks, as set forth in
23 subsection (f) of this section.
24

25 New §800.68(e) provides that at least 80 percent of federal TANF funds associated with the AEL
26 program--together with any state general revenue funds appropriated as TANF maintenance-of-
27 effort--will be allocated by the Commission to the workforce areas according to a need-based
28 formula, as follows:

29 --(1) 100 percent will be based on:

30 --(A) the relative proportion of the unduplicated number of TANF adult recipients with
31 educational attainment of less than a secondary diploma during the most recently
32 completed calendar year;

33 --(B) an equal base amount; and

34 --(C) the application of a hold-harmless procedure (for any program year after FY 2015).

35 --(2) No more than 15 percent of the funds expended as part of this workforce area allocation
36 must be used for administrative costs, as defined by federal regulations and Commission
37 policy.

38 --(3) No more than 10 percent of this allocation must be available for expenditure within each
39 workforce area on the basis of the achievement of performance benchmarks, as set forth in
40 subsection (f) of this section.
41

42 New §800.68(f) states that AEL performance accountability benchmarks must be established to
43 coincide with performance measures and reports, or other periods, as determined by the
44 Commission. Levels of performance must, at a minimum, be expressed in an objective,
45 quantifiable, and measureable form, and show continuous improvement.
46

1 **Comment:** Seventeen commenters expressed concern that a significant reduction in AEL
2 funds available to their workforce areas, per the allocation methodology set forth in
3 §800.68, would harm the quality and availability of needed adult education services in
4 their respective workforce areas.
5

6 **Response:** The Commission believes funds should be allocated in the same manner as
7 federal AEL funds are allocated to Texas and based on methodologies that are clearly
8 outlined and commensurate with the need for AEL services in each part of the state.
9 Using a different allocation method than used in prior years will result in initial shifts in
10 funds distributed across the state, with some workforce areas experiencing an increase in
11 funding and some experiencing a decrease. While this may result in some workforce
12 areas having less capacity to serve the same number of individuals needing adult
13 education services as in the past, possible capacity decreases are balanced by the ability
14 gained by other workforce areas to increase their capacity to serve the historically unmet
15 needs of their eligible population. Thus, the Commission does not foresee an impact on
16 the number of individuals who may be served statewide.
17

18 The Commission is keenly focused on performance to ensure that funds are used
19 effectively to serve customers and produce positive results. Including performance
20 benchmarks and performance standards highlights the Commission's expectation that
21 grantees will maintain or exceed performance standards through effective service
22 delivery and innovation. Further, the rules allow funds to be deobligated, including
23 voluntarily, if they are not being used effectively to serve individuals needing AEL
24 services at expected levels; however, the Commission will work diligently with grantees
25 to provide technical support and assistance in developing strategies to ensure individuals
26 are receiving needed services, thereby mitigating risks.
27

28 Whether in the past or under current budget conditions, the need for AEL services
29 exceeds the available resources in Texas and no workforce area is funded to fully meet
30 these needs. The Commission expects that AEL grant recipients will identify and
31 coordinate with all available organizations and programs in their workforce areas to
32 expand and leverage services delivered beyond those that may be provided solely with
33 AEL funding.
34

35 **Comment:** Two commenters suggested that TWC consider applying the AEL allocation
36 "hold harmless" provision to the PY'14 allocations, rather than the current rule proposal
37 that such hold harmless provisions apply to allocations only after PY'14 (i.e., beyond
38 FY'15).
39

40 **Response:** The Commission believes the allocation methodology is fair, complies with
41 Texas Labor Code, and aligns with the methodology used to award federal AEL funds to
42 Texas. While some workforce areas will experience a reduction in funding, others will
43 receive additional funds commensurate with the population-based level of need for AEL
44 services in the workforce area. The application of a hold harmless provision would result
45 in workforce areas that are otherwise entitled to additional funding not receiving as much
46 based on need.

1
2 In addition, hold harmless provisions cannot apply until after the PY'14 (period beginning
3 July 1, 2014) allocations because allocations will be made to workforce areas; prior to
4 PY'14, allocations were made in accordance with fiscal agent service delivery areas
5 established based on past practices. The Commission's forthcoming competitive
6 procurement makes funding available to workforce areas to allow improved integration
7 of education and training of adults.
8

9 **Comment:** Eight commenters expressed concern with the proposed set-aside of "state
10 leadership funds" from EL/Civics, state general revenue, and TANF MOE, stating that an
11 increase in funding for state leadership activities will result in decreased funding for
12 direct services. The commenters requested that funding formulas maximize the delivery
13 of direct services and innovation in program delivery.
14

15 **Response:** The Commission has noted its intent to use funding reserved for
16 administration and state leadership activities that will enhance service delivery and
17 support provided to grantees. The Commission is committed to administering all AEL
18 resources as efficiently as possible, with the goal of identifying innovation and processes
19 that will expand AEL services and the outcomes for those receiving the services (e.g.,
20 distance learning investments and employer site-based literacy programs). Generally, the
21 mock allocations generated based on the proposed methodologies show the projected
22 amounts available for FY'15 are not significantly different than funding levels in FY'14
23 or FY'13, factoring in the effect of the FY'13 federal sequestration and the fact that carry-
24 over funding is not included in the allocations. State leadership funds allow the
25 Commission to support innovation and initiatives that reflect local integrated service
26 delivery models consistent with the legislature's vision for the program.
27

28 **Comment:** Two commenters expressed concern with a lack of a volume correction for
29 headcount or contact hours in the funding formula, creating drastic funding decreases
30 from workforce areas of high population density that currently carry the majority of the
31 program enrollment--ultimately resulting in increased costs per student and an overall
32 drop in enrollments. One commenter also stated that this could lead to some workforce
33 areas being overfunded.
34

35 **Response:** The Commission is following the requirements of Texas Labor Code
36 §302.062, which provides that in block granting funds for workforce training,
37 employment services, and associated support services to workforce areas, the
38 Commission must allocate amounts across the state using the same formula used to
39 provide the funds to the state. The US Department of Education (ED) allocates AEL
40 funds to Texas on the basis of the relative proportion of the population age 18 and over
41 without a secondary degree and not enrolled in school. The AEL rules also include
42 allocating federal AEL funds (excluding EL/Civics) and associated state matching funds
43 to the workforce areas on this same basis. The allocation of federal EL/Civics funds is
44 also proposed on the same basis that ED allocates the funds to Texas. The methodologies
45 do not divert resources from workforce areas of high population density; rather, they

1 allocate resources in concert with the relative proportion of the population age 18 and
2 over without a secondary degree and not enrolled in school.

3
4 Using a different method for the allocation of AEL funds than used in prior years will
5 result in initial shifts in how funds are distributed across the state--with some workforce
6 areas experiencing an increase in funding and some experiencing a decrease. While some
7 workforce areas may have decreased capacity to serve as many individuals needing AEL
8 services as in the past, other workforce areas will have increased capacity to serve more
9 of the population in need of services. Thus, the Commission does not foresee an impact
10 on the number of individuals who may be served statewide.

11
12 **Comment:** One commenter stated that equalization in the distribution of funding across
13 the state is important, but that performance funding provides incentives for programs
14 small and large and should remain intact.

15
16 **Response:** The Commission clarifies that the rule contains provisions for performance
17 funding, with a percentage of funding made available for expenditure within each
18 workforce area on the basis of the achievement of performance benchmarks set forth in
19 §800.68.

20
21 **§800.71. General Deobligation and Reallocation Provisions**

22 Section 800.71(b) adds "AEL grant recipient" as an entity subject to §§800.71 - 800.77 of this
23 subchapter.

24
25 Section 800.71(b)(1) adds "Adult Education and Literacy" as a category of funding subject to
26 §§800.71 - 800.77 of this subchapter.

27
28 Certain paragraphs in this section have been renumbered to accommodate additions.

29
30 **§800.72. Reporting Requirements**

31 Section 800.72 adds "an AEL grant recipient" as an entity subject to the provisions regarding
32 reporting requirements.

33
34 **New §800.78. Midyear Deobligation of AEL Funds**

35 New §800.78 sets forth the following provisions for midyear deobligation of AEL funds, which
36 are similar to those applicable to other workforce funding streams, except that priority must be
37 given to AEL grant recipients providing AEL services in the same workforce area, upon receipt
38 and approval by the Commission of an acceptable plan:

39 --(a) The Commission may deobligate funds from an AEL grant recipient during the program
40 year if an AEL grant recipient is not meeting the expenditure thresholds set forth in
41 subsection (b) of this section.

42 --(1) AEL grant recipients that fail to meet the expenditure thresholds set forth in
43 subsection (b) of this section at the end of months five, six, seven, or eight of the
44 program year (i.e., midyear) will be reviewed to determine the causes for the
45 underexpenditure of funds, except as set forth in subsection (e) of this section.

- 1 --(2) The Commission must not deobligate more than the difference between an AEL grant
2 recipient's actual expenditures and the amount corresponding to the relative
3 proportion of the program year.
- 4 --(3) The Commission must not deobligate funds from an AEL grant recipient that failed to
5 meet the expenditure thresholds set forth in subsection (b) of this section, if within
6 60 days prior to the potential deobligation period the Commission executes a
7 contract amendment for a supplemental allocation or reallocation of funds in the
8 same program funding category.
- 9 --(b) The Commission may deobligate funds midyear, as set forth in subsection (a) of this
10 section, if an AEL grant recipient fails to achieve the expenditure of an amount
11 corresponding to 90 percent or more of the relative proportion of the program year.
- 12 --(c) An AEL grant recipient subject to deobligation for failure to meet the requirements set forth
13 in this section must, upon request by the Commission, submit a written justification. For an
14 AEL consortium, a copy must be provided to all consortium members. The written
15 justification must provide sufficient detail regarding the actions an AEL grant recipient will
16 take to address its deficiencies, including:
- 17 --(1) expansion of services proportionate to the available resources;
18 --(2) projected service levels and related performance;
19 --(3) reporting outstanding obligations; and
20 --(4) any other factors an AEL grant recipient would like the Commission to consider.
- 21 --(d) Any amounts deobligated from an AEL grant recipient must be made available as a first
22 priority to any other AEL grant recipient(s) providing AEL services within the same
23 workforce area that meet the requirements of new §800.80(a), upon receipt and approval by
24 the Commission of an acceptable plan.
- 25 --(e) To the extent this section may be found not to comply with federal requirements, or should
26 any related federal waivers expire, the Commission will be subject to federal requirements in
27 effect, as applicable.

28
29 **New §800.79. Voluntary Deobligation of AEL Funds**

30 New §800.79 states that to request a voluntary deobligation of funds allocated to the workforce
31 area, an AEL grant recipient's chief executive officer must submit a written request to the
32 Commission. For an AEL consortium, a copy must be provided to all consortium members.
33 Any amounts voluntarily deobligated from an AEL grant recipient must be available as a first
34 priority to any other AEL grant recipient(s) providing AEL services within the same workforce
35 area, upon receipt and approval by the Commission of an acceptable plan.

36
37 **New §800.80. Reallocation of AEL Funds**

38 New §800.80 sets forth the reallocation provisions for AEL funds, which are similar to those
39 applicable to other workforce funding streams, with the exception that any AEL reallocation
40 must apply to AEL grant recipients, as follows:

- 41 --(a) For an AEL grant recipient to be eligible to receive deobligated AEL funds, the
42 Commission may consider whether the AEL grant recipient:
- 43 --(1) has met targeted expenditure levels as required by §800.78(a) of this subchapter, as
44 applicable, for that period;
45 --(2) has not expended or obligated more than 100 percent of the grant recipient's allocation
46 for the category of funding;

- 1 --(3) has demonstrated that expenditures conform to cost category limits for funding;
- 2 --(4) has demonstrated the need for and ability to use additional funds;
- 3 --(5) is current on expenditure reporting;
- 4 --(6) is current with all single audit requirements; and
- 5 --(7) is not under sanction.
- 6 --(b) Any amounts deobligated or voluntarily deobligated from an AEL grant recipient must be
- 7 made available as a first priority to any other AEL grant recipients providing AEL services
- 8 within the same workforce area that meet the requirements of new §800.80(a), upon receipt and
- 9 approval by the Commission of an acceptable plan. Following the determination that any such
- 10 plan has not been determined to be acceptable, the Commission may consider an AEL grant
- 11 recipient satisfying the requirements of subsection (a) of this section, upon receipt and approval
- 12 by the Commission of an acceptable plan.

13
14 **COMMENTS WERE RECEIVED FROM:**

- 15 Vicki Angel, Retired Adult Education Instructor
- 16 Dr. Pamela Anglin, President of Paris Junior College
- 17 Carole Beal, Transition Specialist, Harris County Department of Education
- 18 Kay Brooks, Grant Project Manager for GED & ESL Program, Brazosport College
- 19 Beverly Bucsanyi, Adult ESL Instructor
- 20 Ann Coleman, Texarkana ISD
- 21 Lynda Detwiler, Adult ESL Instructor
- 22 Mark Guthrie, Chairman of the Texas Association of Workforce Boards and Chairman of the
- 23 Gulf Coast Workforce Development Board
- 24 Natalia Guzman, Adult Basic Education Instructor, Harris County Department of Education
- 25 Joshua Hayes, Director of Adult Education, College of the Mainland
- 26 Leslie Helmcamp, Policy Analyst for the Center for Public Priorities
- 27 Ronda Jameson, Director of STEM Education, Texarkana ISD
- 28 Belinda Lee, Maud, Texas
- 29 Dr. Beth Lewis, President of the College of the Mainland
- 30 Otswen, Northeast Texas
- 31 Karen Ottinger, Adult Learning Center, Texarkana ISD
- 32 Shirly Pennypacker, Northeast Texas
- 33 Dean Ransdell, Director of Adult Education, Texarkana ISD
- 34 Debra Shelby, Adult Education Instructor, Texarkana ISD
- 35 Shannon Shipp, Federal Bureau of Prisons
- 36 Mike Temple, Executive Director of the Gulf Coast Workforce Development Board
- 37 Vanessa Wakefield, Counselor, Washington Academy Charter School
- 38 Barbara Yoder, Adult Education, Cleburne ISD

39
40 The Agency hereby certifies that the adoption has been reviewed by legal counsel and found to
41 be within the Agency's legal authority to adopt.

42
43 The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the
44 Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it
45 deems necessary for the effective administration of Agency services and activities.

1 The adopted rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.
2

1
2 **CHAPTER 800. GENERAL ADMINISTRATION**
3

4 **SUBCHAPTER A. GENERAL PROVISIONS**
5

6 **§800.2. Definitions.**
7

8 The following words and terms, when used in this part, relating to the Texas Workforce
9 Commission, shall have the following meanings, unless the context clearly indicates
10 otherwise.
11

- 12 (1) Adult Education and Literacy (AEL)--Services designed to provide adults with
13 sufficient basic education that enables them to effectively:
14
15 (A) acquire the basic educational skills necessary for literate functioning;
16
17 (B) participate in job training and retraining programs;
18
19 (C) obtain and retain employment; and
20
21 (D) continue their education to at least the level of completion of secondary
22 school and preparation for postsecondary education.
23
- 24 (2) Agency--The unit of state government established under Texas Labor Code
25 Chapter 301 that is presided over by the Commission and administered by the
26 executive director to operate the integrated workforce development system and
27 administer the unemployment compensation insurance program in this state as
28 established under the Texas Unemployment Compensation Act, Texas Labor
29 Code Annotated, Title 4, Subtitle A, as amended. The definition of "Agency"
30 shall apply to all uses of the term in rules contained in this part, or unless
31 otherwise defined, relating to the Texas Workforce Commission that are
32 adopted after February 1, 2001.
33
- 34 (3) Allocation--The amount approved by the Commission for expenditures to a
35 local workforce development area during a specified program year, according
36 to specific state and federal requirements.
37
- 38 (4) Board--A Local Workforce Development Board created pursuant to Texas
39 Government Code §2308.253 and certified by the governor pursuant to Texas
40 Government Code §2308.261. This includes such a Board when functioning as
41 the Local Workforce Investment Board as described in the Workforce
42 Investment Act §117 (29 U.S.C.A. §2832), including those functions required
43 of a Youth Council, as provided for under Workforce Investment Act §117(i).
44 The definition of Board shall apply to all uses of the term in the rules contained
45 in this part, or unless otherwise defined, relating to the Texas Workforce
46 Commission that are adopted after February 1, 2001. Boards are subrecipients

1 as defined in OMB Circular A-133.

- 2
- 3 (5) Child Care--Child care services funded through the Commission, which may
4 include services funded under the Child Care and Development Fund, WIA,
5 and other funds available to the Commission or a Board to provide quality
6 child care to assist families seeking to become independent from, or who are at
7 risk of becoming dependent on, public assistance while parents are either
8 working or participating in educational or training activities in accordance with
9 state and federal statutes and regulations.
- 10
- 11 (6) Choices--The employment and training activities created under §31.0126 of
12 the Texas Human Resources Code and funded under TANF (42 U.S.C.A. 601
13 et seq.) to assist persons who are receiving temporary cash assistance,
14 transitioning off, or at risk of becoming dependent on temporary cash
15 assistance or other public assistance in obtaining and retaining employment.
- 16
- 17 (7) Commission--The body of governance of the Texas Workforce Commission
18 composed of three members appointed by the governor as established under
19 Texas Labor Code §301.002 that includes one representative of labor, one
20 representative of employers, and one representative of the public. The
21 definition of Commission shall apply to all uses of the term in rules contained
22 in this part, or unless otherwise defined, relating to the Texas Workforce
23 Commission that are adopted after February 1, 2001.
- 24
- 25 (8) Formal Measures--Workforce development services performance measures
26 adopted by the governor and developed and recommended through the Texas
27 Workforce Investment Council (TWIC).
- 28
- 29 (9) Employment Service--A program to match qualified job seekers with
30 employers through a statewide network of one-stop career centers. (The
31 Wagner-Peyser Act of 1933 (Title 29 U.S.C., Chapter 4B) as amended by the
32 Workforce Investment Act of 1998 (P.L. 105-220))
- 33
- 34 (10) Executive Director--The individual appointed by the Commission to
35 administer the daily operations of the Agency, which may include a person
36 delegated by the Executive Director to perform a specific function on behalf of
37 the Executive Director.
- 38
- 39 (11) Local Workforce Development Area (workforce area)--Workforce areas
40 designated by the governor pursuant to Texas Government Code §2308.252
41 and functioning as a Local Workforce Investment Area, as provided for under
42 Workforce Investment Act §116 and §189(i)(2) (29 U.S.C.A., §2831 and
43 §2939).
- 44
- 45 (12) One-Stop Service Delivery Network--A one-stop-based network under which
46 entities responsible for administering separate workforce investment,

1 educational, and other human resources programs and funding streams
2 collaborate to create a seamless network of service delivery that shall enhance
3 the availability of services through the use of all available access and
4 coordination methods, including telephonic and electronic methods--also
5 known as Texas Workforce Solutions.
6

7 (13) Performance Measure--An expected performance outcome or result.
8

9 (14) Performance Target--A contracted numerical value setting the acceptable and
10 expected performance outcome or result to be achieved for a performance
11 measure, including Core Outcome Formal Measures. Achievement between
12 95 and 105 percent of the established target is considered meeting the target.
13

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

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

18 (B) Choices: October 1 - September 30;
19

20 (C) Employment Service: October 1 - September 30;
21

22 (D) Supplemental Nutrition Assistance Program Employment and Training:
23 October 1 - September 30;
24

25 (E) Project RIO: October 1 - September 30;
26

27 (F) Trade Act services: October 1 - September 30;
28

29 (G) Workforce Investment Act (WIA) Adult, Dislocated Worker, and Youth
30 formula funds: July 1 - June 30;
31

32 (H) WIA Alternative Funding for Statewide Activities: October 1 -
33 September 30;
34

35 (I) WIA Alternative Funding for One-Stop Enhancements: October 1 -
36 September 30; and
37

38 (J) Adult Education and Literacy: July 1 - June 30.
39

40
41 (16) Project Reintegration of Offenders (RIO)--A program that prepares and
42 transitions ex-offenders released from Texas Department of Criminal Justice or
43 Texas Juvenile Justice Department incarceration into gainful employment as
44 soon as possible after release, consistent with provisions of the Texas Labor
45 Code, Chapter 306; Texas Government Code §2308.312; and the
46 Memorandum of Understanding with the Texas Department of Criminal

1 Justice and the Texas Juvenile Justice Department.

- 2
- 3 (17) Supplemental Nutrition Assistance Program Employment and Training (SNAP
4 E&T)--A program to assist SNAP recipients to become self-supporting through
5 participation in activities that include employment, job readiness, education,
6 and training, activities authorized and engaged in as specified by federal
7 statutes and regulations (7 U.S.C.A. §2011), and Chapter 813 of this title
8 relating to Supplemental Nutrition Assistance Program Employment and
9 Training.
- 10
- 11 (18) TANF--Temporary Assistance for Needy Families, which may include
12 temporary cash assistance and other temporary assistance for eligible
13 individuals, as defined in the Personal Responsibility and Work Opportunity
14 Reconciliation Act of 1996, as amended (7 U.S.C.A. §201.1 et seq.) and the
15 TANF statutes and regulations (42 U.S.C.A. §601 et seq., 45 Code of Federal
16 Regulations (C.F.R.) Parts 260 - 265). TANF may also include the TANF State
17 Program (TANF SP), relating to two-parent families, which is codified in
18 Texas Human Resources Code, Chapter 34.
- 19
- 20 (19) Trade Act Services--Programs authorized by the Trade Act of 1974, as
21 amended (and 20 C.F.R. Part 617) providing services to dislocated workers
22 eligible for Trade benefits through Workforce Solutions Offices.
- 23
- 24 (20) TWIC--Texas Workforce Investment Council, appointed by the governor
25 pursuant to Texas Government Code §2308.052 and functioning as the State
26 Workforce Investment Board, as provided for under Workforce Investment Act
27 §111(e) (29 U.S.C.A. §2821(e)). In addition, pursuant to the Workforce
28 Investment Act §194(a)(5) (29 U.S.C.A. §2944(a)(5)), TWIC maintains the
29 duties, responsibilities, powers, and limitations as provided in Texas
30 Government Code §§2308.101 - 2308.105.
- 31
- 32 (21) WIA--Workforce Investment Act (P.L. 105-220, 29 U.S.C.A. §2801 et seq.).
33 References to WIA include references to WIA formula-allocated funds unless
34 specifically stated otherwise.
- 35
- 36 (22) WIA Formula-Allocated Funds--Funds allocated by formula to workforce
37 areas for each of the following separate categories of services: WIA Adult,
38 Dislocated Worker and Youth (excluding the Secretary's and governor's
39 reserve funds and rapid response funds).
- 40
- 41 (23) Workforce Solutions Offices Partner--An entity that carries out a workforce
42 investment, educational, or other human resources program or activity, and that
43 participates in the operation of the One-Stop Service Delivery Network in a
44 workforce area consistent with the terms of a memorandum of understanding
45 entered into between the entity and the Board.
- 46

1 **SUBCHAPTER B. ALLOCATIONS**

2
3 **§800.51. Scope and Purpose.**

- 4
5 (a) The purpose of this rule is to interpret Texas Labor Code, §302.062, relating to the
6 allocation of available funds for workforce training and services from the Texas
7 Workforce Commission to workforce areas, as well as Texas Labor Code, §301.001
8 and §302.002, which establish the Texas Workforce Commission to operate an
9 integrated workforce development system in this state, in particular through the
10 consolidation of job training, employment, and employment-related programs, and
11 direct the executive director to consolidate the administrative and programmatic
12 functions under the authority of the Commission, to achieve efficient and effective
13 delivery of services. It is the intent of the Commission to allocate funds to
14 workforce areas for the purpose of meeting or exceeding statewide performance
15 measures as set forth in the state General Appropriations Act and consistent with the
16 authority reflected in Texas Labor Code §302.004, satisfying federal program
17 requirements, and operating an integrated workforce development system. This
18 subchapter sets forth the funding to be allocated to workforce areas and the methods
19 and procedures to be followed, in order to accomplish the consolidation and
20 integration of workforce development programs. The Commission is committed,
21 whenever possible, to allocating an amount of funds available for workforce training
22 and services greater than the minimum level set by law.
23
- 24 (b) Funds allocated or reallocated under this subchapter will only be made available
25 under the terms of a properly executed contract between the Commission and a
26 certified Board with an approved plan or an AEL grant recipient with an approved
27 contract with the Commission.
28
- 29 (c) The allocation formulas described in this subchapter will only be applicable for
30 allocations and executed contracts for a complete program year. For contract periods
31 of less than a complete program year, the allocated amounts will be negotiated
32 between the Commission and the Board or an AEL grant recipient, based upon the
33 remaining months of the program year.
34
- 35 (d) Subsections (a) - (c) of this section shall apply to all sections contained in this
36 subchapter unless a section specifically states otherwise.
37
- 38 (e) Funds available to the Commission that are not otherwise allocated or reallocated
39 under this subchapter, may be used by the Commission for purposes authorized by
40 state and federal laws and regulations.
41
- 42 (f) Notwithstanding any other provision of the rules contained in this part, the level of
43 funding allocated to a workforce area may be determined, modified, or reallocated
44 by the Commission for one or more of the following reasons:
45
- 46 (1) to ensure full utilization of the funding;

- (2) to ensure compliance with state and federal requirements applicable to the state;
- (3) to meet the state's federal participation rates;
- (4) to respond to caseload changes; or
- (5) to respond to unforeseen demographic or economic changes.

§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 TANF benefits that a state must engage in an approved work activity for a specified number of hours per week as provided by 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 Board or an 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

1 AEL grant recipient for allocated funds, on the basis of provisions as set forth
2 in §800.73 and §800.74 of this subchapter.

- 3
- 4 (6) Equal Base Amount--An amount equivalent to .10 percent (one-tenth of one
5 percent) of a total allocation, which shall be provided equally to each
6 workforce area.
- 7
- 8 (7) Hold Harmless/Stop Gain--A procedure that assures that a relative proportion
9 of an allocation to a workforce area is not below 90 percent of the
10 corresponding proportion for the past two years, or that the current year
11 proportion is not above 125 percent of the prior two-year relative proportion.
12
- 13 (8) Monthly expenditure report--A written or electronically submitted report by a
14 Board or an AEL grant recipient that contains information regarding services
15 for each category of funding allocated by the Commission, and in which the
16 Board or an AEL grant recipient lists expenditures and obligations by category
17 of funding.
- 18
- 19 (9) Obligation--A debt established by a legally binding contract, letter of
20 agreement, sub-grant award, or purchase order, which has been executed prior
21 to the end of a contract period, for goods and services provided by the end of
22 the contract period, and which will be liquidated 60 calendar days after the end
23 of a contract period, unless such definition is superceded by federal
24 requirements.
- 25
- 26 (10) Relative proportion of the program year--The corresponding part of the
27 program year that is used to compare expenditures. That is, if 50 percent of the
28 program year has transpired, then the relative proportion of the program year is
29 50 percent.
- 30
- 31 (11) WIA Formula Allocated Funds--Funds allocated by formula to workforce areas
32 for each of the following separate categories of funding: WIA Adult,
33 Dislocated Worker, and Youth.
- 34
- 35

36 §800.68 Adult Education and Literacy.

- 37 (a) AEL funds available to the Commission to provide services under the federal Adult
38 Education and Family Literacy Act (AEFLA), WIA Title II, together with associated
39 state general revenue matching funds and federal TANF funds--together with any
40 state general revenue funds appropriated as TANF maintenance-of-effort--will be
41 used by the Commission as set forth in subsections (b) - (f) of this section.
- 42 (b) At least 82.5 percent of the federal funds constituting the total state award of AEFLA
43 state grants--including amounts allotted to the eligible agency having a state plan, as
44 provided by AEFLA §211(c) and amounts provided to the eligible agency under
45 §243 for English Literacy/Civics (EL/Civics)--will be allocated by the Commission
46 to the workforce areas. From the amount allotted to the eligible agency having a

1 state plan, as provided by AEFLA §211(c), the Commission will allocate amounts to
2 the workforce areas according to the established federal formula, as follows:

- 3
4 (1) 100 percent will be based on:
5
6 (A) the relative proportion of individuals residing within each workforce area
7 who are at least 18 years of age, do not have a secondary school diploma
8 or its recognized equivalent, and are not enrolled in secondary school,
9 during the most recent period for which statistics are available;
10
11 (B) an equal base amount; and
12
13 (C) the application of a hold-harmless procedure (for any program year after
14 Fiscal Year (FY) 2015).
15
16 (2) No more than 5 percent of the funds expended as part of this workforce area
17 allocation shall be used for administrative costs, as defined by AEFLA,
18 provided, however, that the Special Rule outlined in AEFLA §233(b) shall
19 apply with effective justification, as appropriate.
20
21 (3) No more than 10 percent of this allocation shall be available for expenditure
22 within each workforce area on the basis of the achievement of performance
23 benchmarks, as set forth in subsection (f) of this section.

24
25 (c) At least 80 percent of the state general revenue matching funds associated with the
26 allotment of federal funds to the eligible agency having a state plan, as provided by
27 AEFLA §211(c) will be allocated by the Commission to the workforce areas
28 according to the established federal formula, as follows:

- 29
30 (1) 100 percent will be based on:
31
32 (A) the relative proportion of individuals residing within each workforce area
33 who are at least 18 years of age, do not have a secondary school diploma
34 or its recognized equivalent, and are not enrolled in secondary school,
35 during the most recent period for which statistics are available;
36
37 (B) an equal base amount; and
38
39 (C) the application of a hold-harmless procedure (for any program year after
40 FY 2015).
41
42 (2) No more than 15 percent of the funds expended as part of this workforce area
43 allocation shall be used for administrative costs, as defined by Commission
44 policy.
45
46 (3) No more than 10 percent of this allocation shall be available for expenditure

1 within each workforce area on the basis of the achievement of performance
2 benchmarks, as set forth in subsection (f) of this section.
3

4 (d) At least 82.5 percent of the federal funds provided to the eligible agency from
5 amounts under AEFLA §243 for EL/Civics will be allocated by the Commission
6 among the workforce areas according to the established federal formula, as follows:
7

8 (1) The relative proportion based on:
9

10 (A) 65 percent of the average number of legal permanent residents during the
11 most recent 10-year period, available from U.S. Citizenship and
12 Immigration Services data; and
13

14 (B) 35 percent of the average number of legal permanent residents during the
15 most recent three-year period, available from U.S. Citizenship and
16 Immigration Services data;
17

18 (2) a base amount of 1 percent for each workforce area; and
19

20 (3) the application of a hold-harmless procedure (for any program year after FY
21 2015).
22

23 (4) No more than 5 percent of the funds expended as part of this workforce area
24 allocation shall be used for administrative costs, as defined by AEFLA.
25

26 (5) No more than 10 percent of this allocation shall be available for expenditure
27 within each workforce area on the basis of the achievement of performance
28 benchmarks, as set forth in subsection (f) of this section.
29

30 (e) At least 80 percent of federal TANF funds associated with the AEL program--
31 together with any state general revenue funds appropriated as TANF maintenance-
32 of-effort--will be allocated by the Commission to the workforce areas according to a
33 need-based formula, as follows:
34

35 (1) 100 percent will be based on:
36

37 (A) the relative proportion of the unduplicated number of TANF adult
38 recipients with educational attainment of less than a secondary diploma
39 during the most recently completed calendar year;
40

41 (B) an equal base amount; and
42

43 (C) the application of a hold-harmless procedure (for any program year after
44 FY 2015).
45

46 (2) No more than 15 percent of the funds expended as part of this workforce area

1 allocation shall be used for administrative costs, as defined by federal
2 regulations and Commission policy.

3
4 (3) No more than 10 percent of this allocation shall be available for expenditure
5 within each workforce area on the basis of the achievement of performance
6 benchmarks, as set forth in subsection (f) of this section.
7

8 (f) AEL performance accountability benchmarks shall be established to coincide with
9 performance measures and reports, or other periods, as determined by the
10 Commission. Levels of performance shall, at a minimum, be expressed in an
11 objective, quantifiable, and measureable form, and show continuous improvement.
12

13 **§800.71. General Deobligation and Reallocation Provisions.**

14
15 (a) Purpose. The purpose of this rule is to promote effective service delivery, financial
16 planning, and management to ensure full utilization of funding, and to reallocate
17 funds to populations in need.
18

19 (b) Scope. Sections 800.71 - 800.77 of this subchapter shall apply to funds provided to
20 workforce areas under a contract between the Board or an AEL grant recipient and
21 the Commission for the following categories of funding:
22

23 (1) Adult Education and Literacy

24 (2) Child Care

25 (3) Choices

26 (4) Employment Service

27 (5) SNAP E&T

28 (6) Project RIO

29 (7) WIA Alternative Funding for Statewide Activities

30 (8) WIA Alternative Funding for One-Stop Enhancements
31
32
33
34
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36
37
38

39 **§800.72. Reporting Requirements.**

40
41 (a) A Board or an AEL grant recipient shall submit a monthly financial report, including
42 accrued expenditures and obligations, on or before the 20th calendar day of the
43 following month that list information as required by the Commission for the
44 reporting period.
45

46 (b) The Commission may require that a Board or an AEL grant recipient amend

1 expenditure reports as the result of Commission reviews, audits, or other evaluations.

- 2
- 3 (c) A Board or an AEL grant recipient shall submit a contract closeout settlement
- 4 package on or before 60 days following the end of the contract period.
- 5
- 6 (d) The Commission may suspend payments, advances, or reimbursements to Boards or
- 7 an AEL grant recipient in the cash draw system if required financial reports or
- 8 contract closeout settlement packages are not submitted by the deadline.
- 9
- 10 (e) The Agency's executive director may approve a Board's or an AEL grant recipient's
- 11 request of extension for the submission of a required financial report or contract
- 12 closeout settlement package, if such extension request is received on a timely basis
- 13 with sufficient justification.
- 14

15 **§800.78. Midyear Deobligation of AEL Funds.**

16

- 17 (a) The Commission may deobligate funds from an AEL grant recipient during the
- 18 program year if an AEL grant recipient is not meeting the expenditure thresholds set
- 19 forth in subsection (b) of this section, provided, however, that the requirements of
- 20 subsection (d) of this section are satisfied.
- 21
- 22 (1) AEL grant recipients that fail to meet the expenditure thresholds set forth in
- 23 subsection (b) of this section at the end of months five, six, seven, or eight of
- 24 the program year (i.e., midyear) will be reviewed to determine the causes for
- 25 the underexpenditure of funds, except as set forth in subsection (e) of this
- 26 section.
- 27
- 28 (2) The Commission shall not deobligate more than the difference between an
- 29 AEL grant recipient's actual expenditures and the amount corresponding to the
- 30 relative proportion of the program year.
- 31
- 32 (3) The Commission shall not deobligate funds from an AEL grant recipient that
- 33 failed to meet the expenditure thresholds set forth in subsection (b) of this
- 34 section, if within 60 days prior to the potential deobligation period the
- 35 Commission executes a contract amendment for a supplemental allocation or
- 36 reallocation of funds in the same program funding category.
- 37
- 38 (b) The Commission may deobligate funds from an AEL grant recipient midyear, as set
- 39 forth in subsection (a) of this section, if an AEL grant recipient fails to achieve the
- 40 expenditure of an amount corresponding to 90 percent or more of the relative
- 41 proportion of the program year.
- 42
- 43 (c) An AEL grant recipient subject to deobligation for failure to meet the requirements
- 44 set forth in this section shall, upon request by the Commission, submit a written
- 45 justification. For an AEL consortium, a copy must be provided to all AEL
- 46 consortium members. The written justification shall provide sufficient detail

1 regarding the actions an AEL grant recipient will take to address its deficiencies,
2 including:

- 3
- 4 (1) expansion of services proportionate to the available resources;
 - 5
 - 6 (2) projected service levels and related performance;
 - 7
 - 8 (3) reporting outstanding obligations; and
 - 9
 - 10 (4) any other factors an AEL grant recipient would like the Commission to consider.
 - 11
 - 12 (d) Any amounts deobligated from an AEL grant recipient must be made available as a
13 first priority to any other AEL grant recipient(s) providing AEL services within the
14 same workforce area that meet the requirements of §800.80(a) of this subchapter,
15 upon receipt and approval by the Commission of an acceptable plan.
 - 16
 - 17 (e) To the extent this section may be found not to comply with federal requirements, or
18 should any related federal waivers expire, the Commission will be subject to federal
19 requirements in effect, as applicable.
 - 20

21 **§800.79. Voluntary Deobligation of AEL Funds.**

22
23 To request a voluntary deobligation of funds allocated to the workforce area, an AEL
24 grant recipient's chief executive officer shall submit a written request to the Commission.
25 For an AEL consortium, a copy must be provided to all AEL consortium members. Any
26 amounts voluntarily deobligated from an AEL grant recipient must be made available as
27 a first priority to any other AEL grant recipient(s) providing AEL services within the
28 same workforce area that meet the requirements of §800.80(a) of this subchapter, upon
29 receipt and approval by the Commission of an acceptable plan.

30
31 **§800.80. Reallocation of AEL Funds.**

- 32
- 33 (a) For an AEL grant recipient to be eligible to receive deobligated AEL funds, the
34 Commission may consider whether the AEL grant recipient:
35
 - 36 (1) has met targeted expenditure levels as required by §800.78(a) - (b) of this
37 subchapter, as applicable, for that period;
 - 38
 - 39 (2) has not expended or obligated more than 100 percent of the workforce area's
40 allocation for the category of funding;
 - 41
 - 42 (3) has demonstrated that expenditures conform to cost category limits for
43 funding;
 - 44
 - 45 (4) has demonstrated the need for and ability to use additional funds;
 - 46

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- (5) is current on expenditure reporting;
- (6) is current with all single audit requirements; and
- (7) is not under sanction.

(b) Any amounts deobligated or voluntarily deobligated from an AEL grant recipient shall be made available as a first priority to any other AEL grant recipients providing AEL services within the same workforce area that meet the requirements of subsection (a) of this section, upon receipt and approval by the Commission of an acceptable plan. Following the determination that any such plan has not been determined to be acceptable, the Commission may consider an AEL grant recipient satisfying the requirements of subsection (a) of this section, upon receipt and approval by the Commission of an acceptable plan.