

## **Chapter 800. GENERAL ADMINISTRATION**

### **Subchapter D. INCENTIVE AWARD RULES**

#### **40 TAC §§800.101, 800.102, 800.112 - 800.115, 800.118, 800.120**

The Texas Workforce Commission (Commission) proposes new §800.120 relating to the Workforce Investment Act (WIA) Local Incentive Awards, and proposes amendments to §800.101 relating to Scope and Purpose, §800.102 relating to Definitions, §800.112 relating to Criteria for Award, §800.113 relating to Non-Monetary Incentive Awards, §800.114 relating to Monetary Incentive Awards, §800.115 relating to Incentive Policy Adjustment Model, and §800.118 relating to Distribution of Incentive Awards.

#### **BACKGROUND AND PURPOSE**

Sections 800.101, 800.102, 800.112, 800.113, 800.114, and 800.118 are amended to provide a uniform use of terms. Sections 800.101 and 800.102 are amended to remove references to the Job Training Partnership Act (JTPA) since the State has fully implemented WIA which replaces the JTPA. Section 800.102 is also amended to replace the definition for caseload reduction and add definitions for exemplary performance, local coordination, regional cooperation, and workforce area. The definition of core outcome measures is amended to include performance measures approved by the Legislative Budget Board. The use of the term "active TANF cases" in the definition of caseload reduction was included to clarify that caseload reduction will be evaluated based on the number of families who received Temporary Assistance for Needy Families (TANF) assistance during specific time periods. The definition for local coordination emphasizes the importance of local workforce development boards (Boards) coordinating their services with services provided by the Commission but not funded through the Boards, as well as services funded by sources other than the Commission. The list of grants contained in the proposed definition provides examples of such programs and is not intended to be an exhaustive list of all possible programs. Section 800.113 is amended to clarify that five is the maximum number of non-monetary awards available each fiscal year. As provided by WIA (29 U.S.C. §2801 *et seq.* ) and the federal regulations governing the program (specifically 20 C.F.R. 665.300 *et seq.* ), the State is responsible for oversight of WIA programs administered by the Boards and, as appropriate, awarding incentive awards for outstanding performance by the Boards. The State has developed §800.120, the WIA incentive awards policy, to meet these statutory and regulatory requirements. A provision is included in §800.120 which provides that in determining eligibility for an incentive award, the Commission may consider whether a Board reached a specified minimum expenditure level during the previous program year. It is anticipated that a similar provision will be added to the eligibility requirements for all awards of state reserve WIA funds.

The purpose of these rules is to establish Board eligibility criteria for incentive awards reflective of the WIA principles and the principles of Texas' vision as outlined in the Texas Strategic Five-Year State Workforce Investment Plan for Title I of the Workforce Investment Act of 1998 and the Wagner-Peyser Act for the Period of July 1, 1999-June 30, 2000--Transition Plan (State Plan).

The WIA principles are streamlining services, empowering individuals, universal access, increased accountability, strong role for Boards and the private sector, and state and local flexibility. The four principles of Texas' vision are limited and efficient state government, local control, personal responsibility, and support for strong families.

Randy Townsend, Chief Financial Officer, has determined that for the first five years the rules are in effect, the following statements shall 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 reductions in costs to the State or to local governments expected 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 and administering the rules;

there are no foreseeable implications relating to costs or revenues to the State or to local governments as a result of enforcing or administering the rules; and

there are no anticipated costs to persons who are required to comply with the rules as proposed.

Randy Townsend, Chief Financial Officer, has determined that there is no anticipated adverse impact on small businesses as a result of enforcing or administering these rules because small businesses (including micro-businesses) are not required to do anything as a result of these rules.

Jean Mitchell, Director of Workforce Development, has determined that the public benefit anticipated as a result of the rules as proposed shall be to encourage and reward outstanding performance by Boards and thereby improve the quality of workforce services provided in their communities.

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

#### COMMENTS

Comments on the proposed rules may be submitted to Barbara Cigainero, Workforce Development Division, Texas Workforce Commission, 101 East 15th Street, Room 130BT, Austin, Texas 78778; Fax Number (512) 463-3424; or E-mail to [barbara.cigainero@twc.state.tx.us](mailto:barbara.cigainero@twc.state.tx.us).

Comments must be received by the Commission no later than 30 days from the date this proposal is published in the *Texas Register*.

The new rules are proposed under Texas Labor Code §301.061 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs.

The proposal affects the Texas Labor Code, Title 4.

#### §800.101. Scope and Purpose.

(a) The purpose of the incentive is to reward Local Workforce Development Boards (Boards) [~~(boards)~~] that meet the stated goals of the Commission to increase the local control of workforce development programs and to put Texans to work. The Board [~~board~~] is responsible for providing strategic planning for the workforce [~~local~~] area for all workforce development programs consolidated into the Texas Workforce Commission (Commission). The development of an integrated and coherent workforce development system at the local level is the primary focus of Boards [~~boards~~]. Thus, this policy seeks to recognize Boards [~~boards~~] for achieving high performance as a system, as well as high performance on behalf of the populations annually targeted by the Commission during the budget process. Incentives will emphasize accountability, high performance, continuous improvement and support the State [~~state~~] in achieving workforce development goals.

(b) [~~This rule incorporates by reference the existing rule for performance standards for the Job Training Partnership Act Program cited in §§805.160—805.165 of this title (relating to Performance Standards).~~] State variation of performance standards established by the U. S. Department of Labor and/or state standards shall be published in the *Texas Register* on an annual basis and in a numbered TWC Letter.

#### §800.102. Definitions.

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

(1) [~~(7)~~] Caseload Reduction -- The caseload reduction measure is calculated by first determining the annual monthly average number of active Temporary Assistance for Needy Families (TANF) cases for each county in a workforce area for each of two consecutive years. The annual monthly average number of active TANF cases for each county within the workforce area are averaged to determine the annual monthly average TANF caseload for each Board. This procedure is then repeated for the second year. This results in an annual monthly average number of active TANF cases for each Board for each year. Finally, the percentage of change between the two annual monthly averages is calculated by subtracting year two from year one; dividing the difference by year one, and then multiplying the result by 100. This caseload reduction method does not mirror that promulgated by the Administration for Children and Families (ACF), U.S. Department of Health and Human Services, in calculating the State's caseload reduction factor used to determine the State's federally required participation rate. [The number of percentage points by which the annual average monthly number of families receiving TANF cash assistance has declined in a Local Workforce Development Area (LWDA) during the performance period as specified in TWC Letter ID/NO WD 88-97, "Incentive Policy Adjustment Model."]

(2) [~~(4)~~] Core Outcome Measures -- Workforce Development Program performance measures adopted by the Governor and developed and recommended through the Texas Council on Workforce and Economic Competitiveness (TCWEC) or as otherwise approved by the Legislative Budget Board. TCWEC Core Outcome Measures have been adjusted to allow for a follow-up period of six months in lieu of the one-year period established by TCWEC.

(3) [~~(2)~~] Earnings Gains Measure -- The average earnings of persons employed during the post-placement follow-up periods (six months) compared to the average earnings of the same persons six months prior to program entry.

(4) [~~(3)~~] Employment Measure -- The annual percentage of individuals who entered unsubsidized employment subsequent to participation in job preparation services, who remained employed (by the same or another employer) six months after entering employment.

(5) Exemplary Performance -- Achievement by a Board on WIA performance measures in meeting one or more of the following criteria:

(A) exceeding contract performance measures;

(B) exceeding Commission-designated Full Service Texas Workforce Center certification standards;

(C) implementing an innovative and successful system integration as identified in a One-Stop Innovation Plan; or  
(D) demonstrating exemplary performance through other means as determined by the Commission.

(6) High Performance Achievement -- The top five Boards [ ~~boards~~ ] as ranked by performance outcomes, adjusted for regional economic conditions according to the model cited in § 800.115 of this title (relating to Incentive Policy Adjustment Model).

(7) [ ~~(9)~~ ] Incentive Award Pool -- Funding that the Commission shall reserve during the annual budget process in sufficient amount to use to reward Boards [ ~~boards~~ ] for high performance achievement.

(8) Local Coordination -- Boards providing leadership to ensure cooperation to achieve the most effective customer service results for its population through one or more of the following:

(A) Memorandums of Understanding with required partners that achieve active implementation and integration of related services;

(B) Memorandums of Understanding with partners required by WIA §121(b)(1) but not required by 40 TAC §801.27(b) that include active implementation and integration of related services;

(C) ongoing and regular communication and training on best practices and benchmarks in building systems or delivering services; or

(D) demonstrating local coordination through other means as determined by the Commission, including but not limited to demonstrating coordination with demonstration grants, Welfare-to-Work competitive grants, youth opportunity grants, self-sufficiency grants, and skills development grants.

(9) [ ~~(8)~~ ] Local Workforce Development Boards -- A Board [ ~~board~~ ] that is certified by the Governor of the State of Texas, has a plan approved by the Governor of the State of Texas, and is operating multiple workforce development programs through an executed contract with the Commission.

(10) Regional Cooperation -- Boards working together as a cooperative unit to provide excellence in customer service as a region through one or more of the following:

(A) submitting joint plans or agreements;

(B) engaging in ongoing and regular communication regarding best practices and working together to implement those practices by sharing ideas, data, staff, and other resources;

(C) providing opportunities for joint training, conferences, and staff interaction; or

(D) demonstrating regional cooperation through other means as determined by the Commission.

(11) [ ~~(4)~~ ] Skill Attainment Measure -- The annual measure specified by the Commission based upon the percentage of individuals who completed skill attainment activities and acquired a skill as recognized by the State [ ~~state~~ ] or an industry in the form of an achievement as specified below:

(A) Board certification of youth and adult competency levels set in consultation with area employers and, where appropriate, educational agencies, labor organizations and community-based organizations based on such factors as entry level skills and other hiring requirements; [ ~~board certification of youth/adult competency levels as specified by Job Training Partnership Act §106a(5);~~ ]

(B) a high school diploma;

(C) GED certificate;

(D) postsecondary [ ~~post secondary~~ ] education degree;

(E) occupational license;

(F) occupational certification; or

(G) other certifications recognized by the State [ ~~state~~ ].

(12) Workforce area -- Local Workforce Development Area designated by the Governor as provided in Texas Government Code §2308.252.

(13) [ ~~(5)~~ ] Workforce Development Programs -- Job-training, employment and employment-related educational programs and functions as listed in Texas Labor Code §302.021.

*§800.112. Criteria for Award.*

(a) To encourage system building and accountability in meeting the needs of employers and jobseekers, the State [ ~~state~~ ] will apply four outcome measures to establish a high performance recognition. The four outcome measures are:

(1)-(4) (No change.)

(b) Each Board [ ~~board~~ ] will be evaluated on these core outcome measures for high performance recognition.

(c) In order to be eligible to receive an incentive, a Board [ ~~board~~ ] must be within 90% of the variance range established for each contract performance measure.

*§800.113. Non-Monetary Incentive Awards.*

(a) (No change.)

(b)

To be eligible for a non-monetary incentive award, a certified Board [ board-] must be one of the five outstanding Boards in the state and must have demonstrated exceptional performance in [ performers for any-] one of the four specified core outcome measures.

(c) (No change.)

(d) A Board [ board-] may be recognized as an outstanding performer under more than one measure.

*§800.114. Monetary Incentive Awards.*

(a) Amounts from the Incentive Award Pool may be distributed to Boards [ boards-] based on high performance achievement to a targeted population, and may be used to carry out innovative workforce investment activities consistent with state and federal requirements as determined by the Commission.

(b) A targeted population will be annually identified by the Commission in the budget process. The first three measures set out in §800.112 of this title (relating to Criteria for Award) will be applied to this targeted population, while the fourth measure will be applied as written. Monetary incentives will reward up to five top performing Boards [ boards-] based on high performance in meeting these four measures.

(c) (No change.)

*§800.115. Incentive Policy Adjustment Model.*

(a)-(b) (No change.)

(c) The adjustment rates shall be calculated for each of the workforce areas [ LWDAs-]. The calculated rates shall be used to produce adjusted performance standard rates for each of the workforce areas [ LWDAs-].

(d) (No change.)

*§800.118. Distribution of Incentive Awards.*

The monetary Incentive Award Pool will be awarded to the top five Boards [ boards-] meeting or exceeding their targeted performance measures for the targeted populations.

*§800.120. WIA Local Incentive Awards.*

(a) Allocation of Funding. The Commission shall determine annually the total amount of funds to be allocated from funds available through WIA §128(a) and §133(a)(1) for local incentive awards, taking into consideration availability of funds, number of workforce areas eligible for local incentive awards funds, and other factors as identified by the Commission.

(b) Eligibility Criteria for WIA Local Incentive Awards.

(1) A Board may be considered for a local incentive award for exemplary performance in one or more of the following areas:

(A) regional cooperation among workforce areas;

(B) local coordination of activities carried out under WIA; and

(C) exemplary performance on local performance measures established by the Commission.

(2) In determining the amount of funds awarded to a Board, the Commission may consider such factors as:

(A) the amount of formula WIA funds allocated to the eligible Board relative to the formula allocations to the other Boards;

(B) for awards made during PY 2000, whether the Board can demonstrate that on July 1 it had expended 60 percent of the prior year WIA allocated funds;

(C) for awards made during PY 2001 and succeeding program years, whether the Board can demonstrate that it has met all expenditure requirements for eligibility for awards from State activity funds found in Subchapter B of Chapter 800 of this title (relating to Allocations and Funding);

(D) performance improvement relative to the previous year;

(E) changes in economic conditions, population characteristics, and service delivery system in the workforce area;

(F) the eligible Board's performance for each contract performance measure compared with other Boards;

(G) performance in those areas considered most critical in accomplishing overall system goals;

(H) monitoring reports and resolution activities;

(I) achievement of goals outlined in a One-Stop Innovation Plan; and

(J) additional criteria consistent with implementation of WIA.

(c) Application for WIA Local Incentive Awards.

(1) Only those Boards making a written application shall be considered for local incentive awards.

(2) The Commission shall issue instructions annually which shall include the amount of funds available for awards, the maximum number of awards and instructions for submitting applications for local incentive awards.

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

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