

1 **CHAPTER 800. GENERAL ADMINISTRATION**

2
3 ADOPTED RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.
4 THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT TO
5 FORMATTING CHANGES AS REQUIRED BY THE *TEXAS REGISTER*.
6

7 The Texas Workforce Commission (Commission) adopts the repeal of the following sections of
8 Chapter 800 relating to General Administration:

9
10 Subchapter B. Allocations, §800.73 and §800.74
11

12 The Commission adopts the following new sections of Chapter 800 relating to General
13 Administration:

14
15 Subchapter B. Allocations, §800.73 and §800.74
16

17 The Commission adopts amendments to the following sections of Chapter 800 relating to
18 General Administration:

19
20 Subchapter B. Allocations, §§800.52, 800.71, and 800.75
21

22 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

23 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND**
24 **RESPONSES**

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

27
28 The purpose of the adopted Chapter 800 rule change is to establish an integrated policy for the
29 deobligation and reallocation of Local Workforce Development Board (Board) administered
30 funds. This policy will further the Commission's support of an integrated workforce system and
31 will promote cost benefits through improved, administrative efficiencies in the local workforce
32 development areas (workforce areas).
33

34 In addition, amendments are adopted to reflect changes pursuant to House Bill (HB) 2604,
35 enacted by the 79th Texas Legislature, Regular Session (2005), which directs the transfer of the
36 Disabled Veterans' Outreach Program and Local Veterans' Employment Representative grant
37 from the Agency to the Texas Veterans Commission.
38

39 The adopted changes fulfill statutory requirements embodied in Texas Labor Code §301.001, as
40 amended, establishing the Commission to:

- 41 (1) operate an integrated workforce development system in this state, in particular through the
42 consolidation of job training, employment, and employment-related programs;
43 (2) standardize, simplify, and make more consistent the procedure of determining amounts for
44 deobligation and reallocation;
45 (3) streamline and achieve administrative efficiency and effectiveness in order to foster the
46 integration of workforce development programs, minimize administrative burdens and
47 costs, and maximize the proportion of funding available for services; and

1 (4) delete various obsolete provisions, add to various provisions to make references more
2 accurate and complete, and make various technical corrections.

3
4 Additionally, Texas Labor Code §302.002 directs the Agency's executive director to:

- 5 (1) consolidate the administrative and programmatic functions of the programs under the
6 authority of the Commission to achieve efficient and effective delivery of services; and
7 (2) contract with the Boards for program planning and service delivery.

8
9 Based on the Commission's commitment to an integrated workforce development system--
10 wherein siloed funding streams and diverse programs are blended into a functionally unified
11 whole--the Commission requested and received two waivers from the U.S. Department of Labor
12 (DOL). The purpose of the waivers was to align the policies for the deobligation and
13 reallocation of Board-administered funds. By standardizing and making the procedure of
14 deobligation and reallocation more consistent, the Commission promotes the integration and
15 administration of workforce development programs.

16
17 The waivers allow the Commission to make midyear deobligations and reallocations in order to
18 better manage workforce funding. Based on the approved waivers, the rules have been amended
19 to allow deobligations based on an evaluation of a Board's expenditures, pertinent performance
20 data, and a reasonable cost per participant in months five through eight of the appropriate
21 program year for each funding source, and to integrate the processes for the reallocation of
22 funds. This process is more responsive and allows the Commission to better address the
23 changing needs of workforce areas. Should any related federal waivers expire, the Commission
24 will be subject to federal requirements in effect at that time.

25
26 The Commission believes that having its actions clearly delineated in rule provides the best
27 opportunity for the Boards and the Commission to have a common understanding of how
28 expenditures and performance are reviewed, and the impact of the review on potential
29 deobligations. Boards have consistently performed well, ensuring that services are available
30 throughout their workforce areas, but at times the expenditures and performance indicate that the
31 formula for the allocation may be lagging behind current local economic conditions. The
32 Commission encourages Boards to resize their program and, where appropriate, make voluntary
33 deobligations.

34
35 As noted, Boards' performance has permitted the Commission to minimize deobligations. Over
36 the past six years, the Commission has deobligated less than two-thirds of one percent of block
37 grant allocations to workforce areas. The Commission's record of carefully considered,
38 judicious, and extremely modest deobligations further serves to promote its guiding principle:
39 the most successful deobligation policy results in no deobligations, because services are being
40 provided and funds expended in the workforce area to which they are allocated.

41
42 The Commission embraces this concept and supports Boards in their efforts to meet employers'
43 needs for qualified workers. The adopted rules establish clear standards for potential
44 deobligations and reallocations to further foster ongoing and substantive communications
45 between the Commission in its oversight role, and the Boards in their role as stewards of the
46 funds. The adopted rule establishes a common framework for measuring the local service
47 delivery system against the needs-based formulas established by statute and regulation.

1 Moreover, the adopted rule provides a significant opportunity for the Boards to offer information
2 that informs the Commission about any activities or changes in the local economy that might
3 mitigate a deobligation.

4
5 The adopted rules further support the Commission's goal of an integrated workforce system and
6 allow for increased efficiency in meeting the workforce development needs of employers and job
7 seekers.

8 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

9 (Note: Minor, nonsubstantive editorial changes are made throughout Subchapter B of this
10 chapter that do not change the meaning of the rules and, therefore, are not discussed in the
11 Explanation of Individual Provisions.)

12 **SUBCHAPTER B. ALLOCATIONS**

13 **General Comments**

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18 **Comment:** One commenter thanked the Commission for the opportunity to comment and
19 expressed support of the rule changes.

20
21 **Response:** The Commission appreciates the comment.

22 **§800.52. Definitions**

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25 The Commission adopts new §800.52(10), the definition of "relative proportion of the program
26 year."

27 **§800.71. General Deobligation and Reallocation Provisions**

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29
30 The Commission adopts the amendment of §800.71(b)(7) by removing the reference to
31 "Veterans' Employment and Training" as a category of funding to reflect the direction of HB
32 2604. Therefore, §§800.71(b)(8)–800.71(b)(10) are renumbered as new §§800.71(b)(7)–
33 800.71(b)(9), respectively.

34 **§800.73. Child Care Match Requirements and Deobligation**

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36
37 The Commission adopts the repeal of §800.73, Expenditure, Local Match, and Obligation
38 Levels, and adopts new §800.73, Child Care Match Requirements and Deobligation, which
39 delineates the policy to which Boards must adhere for securing local child care matching funds,
40 as well as the policy for potential deobligations of federal child care funds that remain
41 unmatched after the fourth month of the program year.

42 **§800.74. Deobligation of Funds**

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44
45 The Commission adopts the repeal of §800.74 and adopts new §800.74, which establishes an
46 integrated deobligation policy. Currently, with the exception of WIA formula allocated funds,
47 funds may be deobligated at the end of the third and ninth months of the program year. Federal

1 Trade Adjustment Assistance Act funds have an additional point for deobligation at the sixth
2 month. The Commission believes the current three-month point for deobligation occurs too soon
3 during the program year to fully analyze the relationship between expenditures, service delivery
4 design, and performance--and the ninth month is too late in the program year to adequately align
5 reallocations, service delivery design, and enhancements to performance. Therefore, for all
6 Board-administered funds including WIA formula allocated funds, the Commission adopts the
7 replacement of the current three-month, six-month, and nine-month deobligation points with a
8 new midyear deobligation period that begins at the end of the fifth month and continues through
9 the end of the eighth month in the first year of funds availability.

10
11 The adopted deobligation of Board-administered funds, if applicable, would be based on
12 expenditures, pertinent performance data, and related cost per participant data occurring during
13 the fifth month and continuing through the eighth month. For WIA formula funds, the
14 Commission will review data during the first program year of funds availability in the
15 appropriate program year.

16
17 **Comment:** One commenter stated that obligations should be considered in this rule because
18 often training institutions do not submit invoices that align with benchmarks. The
19 commenter asked how the "cost per participant" would be determined, whether Boards would
20 be benchmarked against one another, and how pertinent performance data would be
21 determined. Additionally, the commenter stated that the "pertinent performance data" and
22 the "related cost per participant data" is too vague, and stated that the Boards did not have
23 input into the definition or methodology.

24
25 **Response:** The Commission appreciates that Boards face challenges with the late billing
26 procedures of many community colleges. The Commission, however, believes that the rules
27 address these challenges by allowing Boards to offer supporting documentation--such as
28 information regarding obligations, input on performance issues, and local policies or
29 anomalies affecting the cost per participant--prior to any action the Commission might take
30 regarding a deobligation.

31
32 Further, the Commission's intent is not to benchmark one Board against another. The
33 Commission believes that the rule is clear in its description of how a reasonable cost per
34 participant is established. The rule sets out four criteria for determining reasonableness of
35 per participant costs, which support an understanding of each Board's service delivery system
36 as well as any recent actions that may affect a Board's formula allocations and relevant local
37 factors.

38
39 Because the rule applies to well-defined funding streams, which include Child Care, WIA
40 Formula funds, and other Board-contracted funds, the rule is clear that the review of pertinent
41 or applicable performance is associated with the funding stream that has failed to meet the
42 expenditure benchmark.

43
44 It is the Commission's intent to establish a clear understanding of the definitions and
45 methodology for the recommendations regarding potential deobligations of certain funding
46 streams. The Commission further believes that the proposed rules provided Boards with the
47 greatest opportunity to provide critical information.

1
2 Additionally, the adopted rules set forth another deobligation point for WIA funds at the end of
3 the first year of funds availability if Boards have not expended 80% of each category of WIA
4 formula funds.

5
6 Boards will be notified by the Commission of any potential deobligations and will be encouraged
7 to voluntarily deobligate any excess funding or provide justification for projected expenditures,
8 as set forth in the adopted rule.

9
10 For Board-administered funds other than WIA formula allocated funds, the Commission will
11 base a potential deobligation on each Board's expenditure of an amount equal to 90% of the
12 corresponding proportion of the category of funds for each of the previous three months. For
13 WIA funds, the Commission will base a potential deobligation on each Board's expenditure of an
14 amount equal to 80% of the corresponding proportion of the category of WIA formula allocated
15 funds for each of the previous three months.

16
17 Funds contracted within sixty days prior to a period during which the Board may be subject to
18 deobligations will not be subject to deobligation.

19
20 It is important to note that the Commission currently has established an incentive for reaching an
21 80% expenditure benchmark for WIA formula allocated funds. Boards that reach the 80%
22 expenditure threshold at the end of the first program year are eligible to receive the
23 Commission's Statewide Activity funds, some of the most flexible federal dollars available for
24 unique local initiatives.

25
26 If a Board fails to meet the 90% or 80% expenditure benchmarks for any three-month period, the
27 Commission will review a Board's performance for the appropriate category of funds, and the
28 reasonableness of the cost per participant for that category of funds. In reviewing a Board's
29 performance, the Commission will determine whether 95% of the applicable performance
30 measure has been achieved. Additionally, the Commission will determine whether a Board has
31 achieved a reasonable cost per participant, based upon the factors set forth in §800.74(d)(2)(A)–
32 (E).

33
34 The adopted rule clarifies that the amount the Commission may deobligate is no greater than the
35 difference between a Board's actual expenditures as of the end of the third consecutive month in
36 which a Board has failed, and the relative proportion of the program year's expected
37 expenditures.

38
39 Recognizing that an individual workforce area's service delivery system presents unique
40 opportunities and challenges, the Commission is permitting an opportunity for Boards to justify
41 their current and projected expenditure levels, pertinent performance data, and service levels
42 prior to the Commission's consideration of a potential deobligation of Board-administered funds,
43 including WIA formula allocated funds.

44
45 **§800.75. Reallocation of Funds**
46

1 Currently, funds administered by the Commission, with the exception of WIA formula allocated
2 funds, are reallocated to eligible workforce areas based on criteria in §800.75(a). A separate
3 method for reallocating WIA formula allocated funds has been employed to address statutory
4 requirements set forth in WIA §128 and §133. Under WIA, all workforce areas not subject to a
5 deobligation receive amounts available for reallocation. Unlike other Board-administered funds,
6 no consideration has been given to a workforce area's demonstrated need, capacity, or current or
7 past performance.

8
9 A waiver granted by the DOL waives federal requirements set forth in WIA §128 and §133 and
10 authorizes the Commission to reallocate recaptured WIA formula funds to workforce areas using
11 the same procedures and criteria the Commission employs for other Board-administered funds.
12 The waiver will promote maximum expenditure of recaptured funds, enabling the Commission to
13 streamline administrative practices and further enhance the Texas workforce system's
14 effectiveness in meeting the needs of employers and job seekers.

15
16 Therefore, the Commission adopts the amendment of §800.75(a) by including WIA formula
17 allocated funds. The Commission also adopts the removal of §800.75(a)(2) and §800.75(b)(3)
18 because these paragraphs are no longer applicable. The Commission seeks to facilitate the
19 maximum expenditure of deobligated Board-administered funds through the redistribution of
20 WIA funds to workforce areas that have achieved not only targeted expenditure levels but also
21 have met established performance targets. Redistributing funds based solely on whether a Board
22 achieves its expenditure target does not fully address performance issues--such as whether the
23 Board has met employers' needs for a highly skilled and job-ready workforce.

24
25 The Commission also adopts the amendment of §800.75(a) and §800.75(b)(1) by removing the
26 reference to "Veterans' Employment and Training" funds to reflect the direction of HB 2604.
27 Additionally, the Commission adopts §800.75(b)(1) to include WIA formula allocated funds.

28
29 **Effective Date**

30 The Commission adopts that the provisions regarding the deobligation of WIA formula
31 allocated funds based upon 80% of the relative proportion of the program year shall be in effect
32 starting with Program Year 2006 funds (beginning July 1, 2006). The Commission further
33 adopts that the provisions regarding the deobligation of non-WIA formula allocated funds based
34 upon 90% of the relative proportion of the program year shall be in effect starting with Program
35 Year 2007 funds (beginning October 1, 2006).

36
37
38 **COMMENTS WERE RECEIVED FROM:**

39
40 Shawna Chambers, on behalf of Workforce Solutions Brazos Valley
41 Janie Bates, on behalf of Workforce Texoma

42
43 The Agency hereby certifies that the adoption has been reviewed by legal counsel and found to
44 be within the Agency's legal authority to adopt.

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

4

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

6

1 proportion for the past two years, or that the current year proportion is not
2 above 125% of the prior two-year relative proportion.
3

- 4 (8) Monthly expenditure report - A written or electronically submitted report by a
5 Board that contains information regarding services for each category of
6 funding allocated by the Commission, and in which the Board lists
7 expenditures and obligations by category of funding.
8
- 9 (9) Obligation - A debt established by a legally binding contract, letter of
10 agreement, sub-grant award, or purchase order, which has been executed prior
11 to the end of a contract period, for goods and services provided by the end of
12 the contract period, and which will be liquidated 60 calendar days after the end
13 of a contract period, unless such definition is superceded by federal
14 requirements.
15
- 16 (10) Relative proportion of the program year - The corresponding part of the
17 program year that is used to compare expenditures. That is, if 50% of the
18 program year has transpired, then the relative proportion of the program year is
19 50%.
20
- 21 (11) WIA Formula Allocated Funds - Funds allocated by formula to workforce
22 areas for each of the following separate categories of funding: WIA Adult,
23 Dislocated Worker, and Youth.
24

25 **§800.71. General Deobligation and Reallocation Provisions**
26

- 27 (a) Purpose. The purpose of this rule is to promote effective service delivery, financial
28 planning, and management to ensure full utilization of funding, and to reallocate
29 funds to populations in need.
30
- 31 (b) Scope. Sections 800.71-800.75 of this chapter shall apply to funds provided to
32 workforce areas under a contract between the Board and the Commission for the
33 following categories of funding:
34
- 35 (1) Child Care;
 - 36
 - 37 (2) Choices;
 - 38
 - 39 (3) Employment Services;
 - 40
 - 41 (4) Food Stamp Employment and Training;
 - 42
 - 43 (5) Project RIO;
 - 44
 - 45 (6) Trade Act Services;
 - 46
 - 47 (7) WIA Formula Allocated Funds;

- (8) WIA Alternative Funding for Statewide Activities; and
- (9) WIA Alternative Funding for One-Stop Enhancements.

§800.73 Child Care Match Requirements and Deobligation

- (a) A Board shall meet the following requirements for unmatched federal Child Care funds that are contingent upon a Board securing local funds.
 - (1) By the end of the fourth month following the beginning of the program year, a Board shall secure donations, transfers, and certifications totaling at least 100% of the amount it needs to secure in order to access the unmatched federal Child Care funds available to the workforce area at the beginning of the program year.
 - (2) Throughout the program year and by the end of the twelfth month, a Board shall ensure completion of all donations, transfers, and certifications consistent with the contribution schedules and payment plans specified in the local agreements.
- (b) The Commission may deobligate, at any time following the fourth month of the program year, all or part of the difference between a Board's actual level of secured and completed match and the level of performance that is required, as set forth in §800.73(a).

§800.74. Deobligation of Funds

- (a) The Commission may deobligate the following funds midyear, as set forth in §800.74(b):
 - (1) Child Care (with the exception of unmatched federal Child Care funds that are contingent upon a Board securing local funds, as set forth in §800.73), Choices, Employment Service, Food Stamp Employment and Training, Project RIO, Trade Act Services, WIA Alternative Funding for Statewide Activities, and WIA Alternative Funding for One-Stop Enhancements funds: if a Board fails to achieve the expenditure of an amount corresponding to 90% or more of the relative proportion of the program year; and
 - (2) WIA formula allocated funds:
 - (A) if a Board fails to achieve the expenditure of an amount corresponding to 80% or more of the relative proportion of the program year for each category of WIA formula allocated funds; and
 - (B) after the end of the twelfth month following the beginning of a program year, any unexpended funds that exceed 20% of the allocation for each

1 category of WIA formula allocated funds for the program year.

2
3 (b) For midyear deobligations during the first program year:

4
5 (1) Boards that are failing to meet the expenditure thresholds, as set forth in
6 §800.74(a), have not achieved at least 95% of the applicable performance
7 measures, or have not achieved a reasonable per participant cost, as set forth in
8 §800.74(d)(2), at the end of months five, six, seven, or eight will be reviewed
9 to determine whether they also have failed to meet such thresholds in the two
10 previous months.

11
12 (2) Boards that have failed to meet expenditure and performance thresholds for
13 three consecutive months, as set forth in §800.74(b)(1), may be subject to
14 deobligation.

15
16 (c) The Commission may deobligate no more than the difference between a Board's
17 actual expenditures as of the end of the three-consecutive-month period during which
18 the Board has failed to expend the amount corresponding to the relative proportion of
19 the program year, as set forth in §800.74(a), and the amount corresponding to the
20 relative proportion of the program year.

21
22 (d) The Commission will not deobligate funds from a Board that failed to meet the
23 expenditure thresholds as set forth in §800.74(a):

24
25 (1) if less than 60 days prior to the potential deobligation period, a contract
26 amendment has been executed with the Board for a supplemental allocation or
27 reallocation of funds in the same program category of funding; or

28
29 (2) if a Board has achieved at least 95% of the applicable performance measures
30 and has achieved a reasonable per participant cost, as of the end of the third
31 consecutive month during which the Board has failed to expend the amount
32 corresponding to the relative proportion of the program year as set forth in
33 §800.74(a). Factors that the Commission may review to determine the
34 reasonableness of per participant costs include:

35
36 (A) the statewide cost per participant served;

37
38 (B) the Board's service levels for each category of funding, as specified in the
39 approved Board plan;

40
41 (C) transfers or redesignations of funds;

42
43 (D) expenditures reported in accordance with the Agency's financial reporting
44 requirements; and

45
46 (E) other local factors that may affect the cost of providing services.
47

- 1 (e) The Commission may deobligate funds if a Board is not meeting expenditure
2 thresholds as set forth in §800.74(a), has not achieved at least 95% of the applicable
3 performance measures, or has not achieved a reasonable per participant cost.
4
- 5 (f) A Board subject to deobligation for failure to meet the requirements set forth in
6 §800.74(d)(2) shall submit a written justification within five working days of the
7 date of notification from the Commission. A Board may voluntarily provide a
8 written justification prior to receiving a formal request from the Commission. The
9 written justification shall provide sufficient detail regarding the actions a Board will
10 take to address its deficiencies, and may include:
11
- 12 (1) expansion of services proportionate to the available resources;
 - 13 (2) projected service levels and related performance;
 - 14 (3) outstanding obligations; and
 - 15 (4) any other factors a Board would like the Commission to consider.
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20 (g) To the extent this section is found not to comply with federal requirements, or
21 should any related federal waivers expire, the Commission will be subject to federal
22 requirements in effect, as applicable.
23

24 **§800.75. Reallocation of Funds**

25 (a) Reallocation.

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27
28 For reallocation of Child Care, including unmatched federal funds that are
29 contingent upon a Board securing local funds, Choices, Employment Service,
30 Food Stamp Employment and Training, Project RIO, Trade Act Services,
31 WIA Formula Allocated Funds, WIA Alternative Funding for Statewide
32 Activities, and WIA Alternative Funding for One-Stop Enhancements funds
33 provided by the Commission, the Commission may reallocate funds to an
34 eligible workforce area based on the applicable method of allocation, as set
35 forth in this subchapter and may modify the amount to be reallocated by
36 considering the following:
37

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

2
3 (1) For a workforce area to be eligible for a reallocation of Child Care (excluding
4 unmatched federal funds that are contingent upon a Board securing local
5 funds), Choices, Employment Services, Food Stamp Employment and
6 Training, Project RIO, Trade Act Services, WIA Formula Allocated Funds,
7 WIA Alternative Funding for Statewide Activities, and WIA Alternative
8 Funding for One-Stop Enhancements funds, the Commission may consider
9 whether a Board:

10
11 (A) has met targeted expenditure levels as required by §800.74(a) and
12 §800.74(b) of this subchapter, as applicable, for that period;

13
14 (B) has not expended more than 100% of the workforce area's allocation for
15 the category of funding;

16
17 (C) has demonstrated that expenditures conform to cost category limits for
18 funding;

19
20 (D) has demonstrated the need for and ability to use additional funds;

21
22 (E) is current on expenditure reporting;

23
24 (F) is current with all single audit requirements; and

25
26 (G) is not under sanction.

27
28 (2) For a workforce area to be eligible for a reallocation of unmatched federal
29 Child Care funds that are contingent upon a Board securing local funds, the
30 Commission may consider whether a Board has met the level for securing and
31 completing local match requirements set out in §800.73(a) of this subchapter,
32 relating to Expenditure, Local Match, and Obligation Levels. The
33 Commission may also consider the factors listed in paragraph (1) of this
34 section that apply, including factors referenced in subparagraphs (B)-(G).

35
36
37 (c) To the extent this section does not comply with federal requirements, or should any
38 related federal waivers expire, the Commission will be subject to federal
39 requirements in effect at that time.