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XX.

TEXAS WORKFORCE COMMISSION

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

Chapter 801. LOCAL WORKFORCE DEVELOPMENT BOARDS

SUBCHAPTER A. GENERAL PROVISIONS

§801.1. Requirements for Formation of Local Workforce Development Boards.

- (a) Purpose of Rule.
 - (1) Upon application by the chief elected officials (CEOs) and approval of the Commission, the Commission shall forward an application to form a Local Workforce Development Board (Board) to the Governor.
 - (2) Before an application may be submitted to the Governor, all requirements of this section shall be met.
- (b) State Law. The formation of Boards is governed by the Workforce and Economic Competitiveness Act, Texas Government Code, Chapter 2308.
- (c) Chief Elected Official Agreement. Creation of a Board requires agreement by at least three-fourths of the CEOs in the local workforce development area (workforce area) who represent units of general local government, including all of the CEOs who represent units of general local government having populations of at least 200,000. The elected officials agreeing to the creation of the Board shall represent at least 75% of the population of the workforce area.
- (d) Chief Elected Officials. The CEOs may, and are encouraged to, consult with local officials other than the ones delineated below. The following officials are designated as the CEOs for the purpose of establishing agreements to form Boards:
 - (1) Mayors.
 - (A) The mayor of each city with a population of at least 100,000;
 - (B) or, if there is no city with a population of greater than 100,000, the mayor of each city with a population greater than 50,000;
 - (C) or, if there are no cities with a population of greater than 50,000, the mayor of the largest city in the workforce area.
 - (D) For purposes of this section, municipal population will be determined by the figure last reported by the Texas State Data Center at the time of submission of the application to the Commission.
 - (2) All county judges included in a workforce area as designated by the Governor.
- (e) Time of Application. CEOs in a workforce area may not establish a Board until the Governor has designated that area as a workforce area as provided in the Workforce and Economic Competitiveness Act, Texas Government Code, Chapter 2308.
- (f) Applications shall meet all Governor-approved criteria for the establishment of Boards.
- (g) Procedures for Formation of a Board. The CEOs shall comply with the following procedures to form a Board.
 - (1) Public process procedure. If three-fourths of the CEOs, as defined in subsection (d) of this section, agree to initiate procedures to establish a Board, they shall conduct a public process, including at least one public meeting, to consider the views of all affected organizations

before making a final decision to form a Board. This public process may include, but is not limited to, notices published in various media and surveys for public comment.

(2) Application procedure.

(A) The CEOs shall submit an application to the Commission. This application shall include evidence of the actions required by paragraph (1) of this subsection. As a part of the application, each of the CEOs, who is in agreement regarding the formation of a Board, shall execute the following documents:

- (i) An interlocal agreement delineating:
 - (I) The purpose of the agreement;
 - (II) The process that will be used to select the CEO who will act on behalf of the other CEOs and the name of such CEO if the person has been selected;
 - (III) The procedure that will be followed to keep those CEOs informed regarding Board activities;
 - (IV) The initial size of the Board;
 - (V) How resources allocated to the workforce area will be shared among the parties to the agreement;
 - (VI) The process to be used to appoint the Board members, which shall be consistent with applicable federal and state laws; and
 - (VII) The terms of office of the members of the Board.
- (ii) An acknowledgment in the following form: We, the chief elected officials of the _____ Workforce Development Area, acknowledge that the following are responsibilities and requirements pursuant to the formation of the Board:
 - (I) The Board will assume the responsibilities for the following committees and councils that will be replaced by the Board unless otherwise provided in Texas Government Code, Chapter 2308: private industry council, quality workforce planning committee, job service employer committee, and local general vocational program advisory committee;
 - (II) At least one Texas Workforce Center shall be established within 180 days of Board certification;
 - (III) The Board shall have its own independent staff and not be a provider of workforce services, unless the Board secures a waiver of these provisions;
 - (IV) The CEOs shall enter into a partnership agreement with the Board to designate a grant recipient to receive, be accountable for, and be liable for any misuse of block grant funds;
 - (V) The partnership agreement shall also specify the entity that will administer the programs, which may be separate from the entity that receives the funds from the state;
 - (VI) The partnership agreement shall define the process through which the Boards and CEOs will develop the strategic and operational plans, including the training plan required under the Workforce Investment Act (WIA); and

- (VII) The strategic plan shall be reviewed by both the Commission and the Texas Workforce Investment Council (TWIC), and approved by the Governor before block grants will be available to the workforce area.
- (B) The application shall include evidence that any affected existing Board has been notified and agrees that its functions and responsibilities will be assumed by the proposed Board upon the proposed Board's final certification by the Governor.
- (C) The application shall include the names and affiliations of individuals recommended for Board membership, with documentation that CEOs followed the nomination process specified in applicable state and federal law, including Texas Government Code §2308.255 and §2308.256.
 - (i) Private sector members shall be owners of business concerns, chief executives, chief operating officers of nongovernmental employers, or other private sector executives who have substantial management or policy responsibility. To be eligible to represent the private sector, at least 51% of an individual's annual income shall be from private sector sources.
 - (ii) Private sector membership should represent the composition of the local pool of employers. The private sector membership should include representatives of the region's larger employers and emerging growth industries. Primary consideration should be given to private sector employers who do not directly provide employment and workforce training services to the general public. CEOs shall develop a profile of the workforce area's major industries using locally obtained information and state-published data. The Agency shall provide relevant labor market information, including data that identifies employment trends, emerging high-growth, high-demand industries, the size of local employers, and other data needed to assist CEOs in developing the employer profile. Documentation submitted with the application shall show how the regional employer profile is reflected in the Board membership.
 - (iii) Board membership shall include representatives of local organized labor organizations, community-based organizations, educational agencies, vocational rehabilitation agencies, public assistance agencies, economic development agencies, the public employment service, local literacy councils, and adult basic and continuing education organizations as required by law.
 - (iv) Representatives of local organized labor organizations shall be nominated by local labor federations unless no employees in the workforce area are represented by such organizations, in which case nominations may be made by other representatives of employees. A labor federation is defined as an alliance of two or more organized labor unions for the purpose of mutual support and action.
 - (v) Board nominees shall be actively engaged in the organization, enterprise, or field that they are nominated to represent. Board nominees shall have an existing relationship with the workforce area through residence or employment within the workforce area.
 - (vi) At least one of the members of a Board appointed under Texas Government Code §2308.256(a) shall, in addition to the qualifications required for the members under that subsection, have expertise in child care or early childhood education.

- (vii) At least one of the members of a Board appointed under Texas Government Code §2308.256(a) shall, in addition to the qualifications required for the members under that subsection:
 - (I) be a veteran as defined in Texas Government Code §2308.251(2); and
 - (II) have an understanding of the needs of the local veterans' population and willingness to represent the interests and concerns of veterans.
- (D) No individual member shall be a representative of more than one sector or category described in this section, except as statutorily permitted for one or more members having:
 - (i) expertise in child care or early childhood education; or
 - (ii) the qualifications set forth in subsection (g)(2)(C)(vii) of this section.
- (E) The application shall include documentary evidence substantiating compliance with the application procedure, including but not limited to, written agreements, minutes of public meetings, copies of correspondence, and such other documentation as may be appropriate.

The provisions of this §801.1 adopted to be effective October 18, 2006, as published in the Texas Register, October 13, 2006, 31 TexReg 8563.

§801.2. Waivers.

- (a) Purpose of Rule. Texas Government Code §2308.264, §2308.267, and §2308.312 set forth prohibitions regarding service delivery, Board staffing, and developmental services. Only under circumstances that fit the criteria specified in those statutes will requests for waivers be granted.
- (b) Independent Service Delivery. A Board is prohibited from directly providing workforce training and services, including operational functions normally associated with such services such as intake, eligibility determination, assessment, and referral, unless a waiver is obtained.
- (c) Separate Staffing. Board staff shall be employed separately and independently of any person that provides workforce training and services, as described in subsection (b) of this section, unless the Board arranges for independent evaluation of any other workforce services provided by the staffing organization and obtains a waiver.
- (d) Developmental Services. A person who provides one-stop services at a Texas Workforce Center shall not also provide developmental services unless a waiver is obtained.
- (e) Requesting a Waiver.
 - (1) Waiver requests shall be submitted to the Commission and contain detailed justification as specified in the respective statutes. The Commission shall review and forward a recommendation to TWIC for consideration. TWIC will forward its recommendation to the Governor for approval.
 - (2) In recommending action on such requests, the Commission shall apply only the criteria specified in the respective statutes.
 - (3) The Commission may require a Board to submit documentation as set forth in Workforce Development Letters to support its waiver request.
- (f) Duration of Waiver.

- (1) A waiver may be granted for a period less than, but not to exceed, the effective term of an approved plan and budget.
- (2) A waiver may be conditioned upon the Board's completion of steps taken to eliminate the need for a waiver.

The provisions of this §801.2 adopted to be effective October 18, 2006, as published in the Texas Register, October 13, 2006, 31 TexReg 8563.

§801.3. Requirements for Submission of Local Workforce Training and Services Plans, Modifications and Amendments.

Repeal of the provisions of this §801.3 was adopted to be effective November 2, 2000, as published in the Texas Register, October 27, 2000, 25 TexReg 10762.

§801.11. Board Member Nomination and Appointment.

- (a) For each Board member nomination, the nominating organization shall submit to the CEOs of the workforce area a completed Board Nomination Slate in a form established by the Commission.
- (b) Documentation in the form of a curriculum vitae, resume, or work history supporting the qualifications of the nomination shall accompany the Board Nomination Slate.
- (c) Once nominations are submitted to and appointments are made by the CEOs, the Board Appointments form, in a format established by the Commission, and documentation shall be submitted to the Agency's Workforce Development Division. Only nominations submitted by the CEOs may be accepted by the Commission. The documentation submitted by the CEOs shall include the following:
 - (1) Board Nomination Slate for each appointment; and
 - (2) Board Appointments form, indicating the official beginning and expiration dates of all appointments.
- (d) Individuals shall be recommended for Board membership in accordance with §801.1(g)(2)(C) of this subchapter.
- (e) Board reappointments shall be processed under the provisions of this chapter.

The provisions of this §801.11 adopted to be effective October 18, 2006, as published in the Texas Register, October 13, 2006, 31 TexReg 8563.

§801.12. Board Member Vacancies.

- (a) If a Board member vacancy occurs due to resignation, termination, or any other reason, the Board Chair shall provide notice to the CEOs of the workforce area and to the Commission within 20 calendar days of such event. Such notice shall include:
 - (1) the name of the Board member;
 - (2) the category represented; and
 - (3) the effective date of resignation, termination or other event causing the vacancy.
- (b) The original resignation letter or documentation of other official action must be maintained at the local Board level.

- (c) The CEOs shall fill a vacancy in a required category, in the same manner as the original appointment, within 90 calendar days from the effective date of the resignation, termination, or other event causing a vacancy. During the 90-day period, the Board will be able to act as a body and conduct business. Any action taken by the Board, with a vacancy in a required category, beyond such 90-day period shall be void.
- (d) If the CEOs fail to fill a vacancy in a required category within 90 calendar days of the effective date of the vacancy, and remain in noncompliance with this section beyond that time, the Commission may impose sanctions under Chapter 800, including the withholding of administrative funds from the Board until compliance is achieved. The Commission may recommend that the Governor decertify the Board.

The provisions of this §801.12 adopted to be effective November 2, 2000, as published in the Texas Register, October 27, 2000, 25 TexReg 10756.

§801.13. Board Member Conflicts of Interest.

- (a) Pursuant to WIA §117(g) (29 U.S.C.A. §2832(g)), this section sets forth the state's Board conflict of interest requirements for disclosure and declaration of a conflict of interest by a Board member.
- (b) A Board member may not vote on any matter that would provide direct financial benefit to the member or the member's immediate family, nor on matters of the provision of services by the member or the entity the member represents. No Board member may participate in a decision in which the member has a direct or indirect interest, particularly a financial interest, which is in substantial conflict with the discharge of the duties of the Board.
- (c) A Board member shall avoid even the appearance of a conflict of interest. Prior to taking office, Board members must provide to the Board Chair a written declaration of all substantial business interests or relationships they, or their immediate families, have with all businesses or organizations which have received, currently receive, or are likely to receive contracts or funding from the Board. Such declarations shall be updated within 30 days to reflect any changes in such business interests or relationships. The Board shall appoint an individual to timely review the disclosure information and advise the Board Chair and appropriate members of potential conflicts.
- (d) Prior to a discussion, vote or decision on any matter before a Board, if a member, or a person in the immediate family of such member, has a substantial interest in or relationship to a business entity, organization or property that would be pecuniarily affected by any official Board action, that member shall disclose the nature and extent of the interest or relationship and shall abstain from voting on or in any other way participating in the decision on the matter. All such abstentions shall be recorded in the minutes of the Board meeting.
- (e) Each Board must include in its organizational plan or bylaws, or in a separate code of conduct, provisions for penalties, sanctions or other disciplinary actions for any direct violations of the Board conflict of interest policy. The following definitions must be incorporated into those provisions.
 - (1) Immediate family -- Any person related within the first degree of affinity (marriage) or consanguinity (blood) to the person involved.
 - (2) Substantial interest -- A person has a substantial interest:
 - (A) in a business entity if:

- (i) the person owns 10% or more of the voting stock or shares of the business, owns 10% or more, or owns \$5,000 or more, of the fair market value of a business; or
 - (ii) funds received by the person from the business exceed 10% of the person's gross income for the previous year;
- (B) in real property if the interest is an equitable or legal ownership with a fair market value of \$2,500 or more; or
- (C) if the Board member is related to a person in the first degree of affinity or consanguinity who has a substantial interest as defined in subparagraph (A) or (B) of this paragraph.

The provisions of this §801.13 adopted to be effective November 2, 2000, as published in the Texas Register, October 27, 2000, 25 TexReg 10756.

§801.16. Agreement for Local Procedures.

- (a) The CEOs in a workforce area shall enter into an Agreement for Local Procedures with the Board as required by Texas Government Code §2308.253(g) and by §801.1(g)(2)(A)(i)(I)–(VI) of this subchapter.
- (b) The Agreement for Local Procedures shall be signed by the current CEOs and the Board Chair.
- (c) Any amendment to an Agreement for Local Procedures, change to a Board's organizational plan or bylaws, or notice of an election of a new CEO or Board Chair shall be submitted to the Agency within 15 calendar days of the adoption of such amendment, change, or election.
- (d) If a CEO or Board Chair is newly elected during the then-current, two-year program planning cycle, such newly elected individual shall submit to the Agency a written statement acknowledging that he or she:
 - (1) has read, understands, and will comply with the current Agreement for Local Procedures; and
 - (2) reserves the option to request negotiations to amend the Agreement for Local Procedures at any time during the official's tenure as CEO or Board Chair.
- (e) All Agreements for Local Procedures and Board organizational plans or bylaws shall state that Board members will not be permitted to delegate any Board duties to proxies or alternates.

The provisions of this §801.16 adopted to be effective October 18, 2006, as published in the Texas Register, October 13, 2006, 31 TexReg 8563.

§801.17. Board Training and Services Plans, Modifications and Amendments.

- (a) Purpose of Rule.
 - (1) All workforce training and services plans and budgets developed by a Board pursuant to state and federal law shall be submitted to the Agency's Workforce Development Division for review.
 - (2) Before a plan and budget is forwarded by the Commission to TWIC for recommendation to the Governor for approval, all requirements of this section shall be met.

- (b) Standards for Submission. The Agency shall provide guidelines for strategic planning and budgeting to Boards. A local workforce training and services plan and budget shall be reviewed according to criteria established by the Agency.
- (c) Plan Modification or Amendment. An approved plan and budget may be changed by either modification or amendment. Either method of change shall be submitted to the Agency for review before implementation.
 - (1) A modification is a substantial revision of a plan and budget. The Agency shall provide criteria to Boards that define what constitutes a substantial revision. Each modification shall provide evidence that a majority of the CEOs of a workforce area or their designee or designees with signatory authority have approved the modification.
 - (2) An amendment is a minor adjustment to a plan and budget. The Agency shall provide criteria to Boards that define what constitutes a minor adjustment. An amendment does not require approval by a majority of the CEOs of a workforce area.

The provisions of this §801.17 adopted to be effective October 18, 2006, as published in the Texas Register, October 13, 2000, 31 TexReg 8563.

SUBCHAPTER B. ONE-STOP SERVICE DELIVERY NETWORK

§801.21. Scope and Purpose.

- (a) The purpose of this subchapter is to set forth the rules relating to the One-Stop Service Delivery Network as set forth in Texas Government Code, Chapter 2308; Texas Labor Code, Chapters 301 and 302; and WIA §121 (29 U.S.C.A. §2841). It is the intent of the Commission, in partnership with Boards, to facilitate the development and maintenance of the One-Stop Service Delivery Network such that information and services responsive to individual needs are available to all customers. The One-Stop Service Delivery Network shall be evaluated against established levels of certification as well as any additional standards developed by the Commission to ensure the continuous improvement of the system.
- (b) The rules contained in this subchapter shall apply, except that to the extent of any conflict, the provisions of Texas Government Code, Chapter 2803 and §801.2 and §801.54 of this chapter shall govern.

The provisions of this §801.21 adopted to be effective October 18, 2006, as published in the Texas Register, October 13, 2006, 31 TexReg 8563.

§801.22. Requirement to Maintain a One-Stop Service Delivery Network.

Each Board shall maintain a One-Stop Service Delivery Network, consistent with WIA, state law, and this subchapter. The One-Stop Service Delivery Network shall include at least one Certified Full-Service Texas Workforce Center providing the core services set forth in §801.28(a) of this subchapter.

The provisions of this §801.22 adopted to be effective October 18, 2006, as published in the Texas Register, October 13, 2006, 31 TexReg 8563.

§801.23. Definitions.

In addition to the definitions contained in §800.2 of this title, the following words or terms shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Certified Full-Service Texas Workforce Center--A local full-service workforce center that has integrated service functions to aid employers and job seekers in all aspects of employment and training in a seamless, nonprogram-specific manner, and has been found to meet the requirements of a Full-Service Texas Workforce Center set out in §801.25(b) of this subchapter.
- (2) Certified Texas Workforce Center--A local workforce center that provides integrated services to aid employers and job seekers in all aspects of employment and training in a seamless nonprogram-specific manner, and has been found to meet the requirements of a Certified Texas Workforce Center set out in §801.25(a) of this subchapter.
- (3) Competent--A federal or state qualified veteran who meets the eligibility requirements of the program from which he or she is seeking services, and is determined eligible for a specific employment and training service funded by that program.
- (4) Eligible Foster Youth--An eligible foster youth is a:
 - (A) Current Foster Youth--A youth, age 14 or older, who is receiving substitute care services under the managing conservatorship of the Texas Department of Family and Protective Services (DFPS). This includes youth residing in private foster homes, group homes, residential treatment centers, juvenile correctional institutions, and relative care; or
 - (B) Former Foster Youth--A youth up to 23 years of age, who formerly was under the managing conservatorship of DFPS, until:
 - (i) the conservatorship was transferred by a court;
 - (ii) the youth was legally emancipated (i.e., the youth's minority status was removed by a court); or
 - (iii) the youth attained 18 years of age.
- (5) Eligible Veteran--an eligible veteran is one of the following:
 - (A) Federal/state qualified veteran--an individual who served in the active military, naval, or air service, and who was discharged or released from such service under conditions other than dishonorable as specified at 38 U.S.C. §101(2). Active service includes full-time duty in the National Guard or a Reserve component, other than full time for training purposes.
 - (B) Federal qualified spouse--the spouse of one of the following:
 - (i) Any veteran who died of a service-connected disability.
 - (ii) Any member of the Armed Forces serving on active duty who, at the time of application for assistance under this section, is listed, pursuant to 37 U.S.C. §556 and regulations issued thereunder, by the Secretary concerned in one or more of the following categories and has been so listed for a total of more than 90 days:
 - (I) Missing in action;
 - (II) Captured in line of duty by a hostile force; or
 - (III) Forcibly detained or interned in line of duty by a foreign government or power.

(iii) Any veteran who has a total disability resulting from a service-connected disability as evaluated by the Department of Veterans Affairs.

(iv) Any veteran who died while a disability, as defined in clause (iii) of this subparagraph, was in existence.

(C) State qualified spouse:

(i) A spouse who meets the definition of federal qualified spouse; or

(ii) A spouse of any member of the armed forces who died while serving on active military, naval, or air service.

(6) National Emergency--A condition declared by the President by virtue of powers previously vested in that office to authorize certain emergency actions to be undertaken in the national interest pursuant to 50 U.S.C. §1621.

The provisions of this §801.23 adopted to be effective December 28, 2009, as published in the Texas Register, December 25, 2009, 34 TexReg 9486.

§801.24. Texas Workforce Center Certification Levels.

(a) All Texas Workforce Centers shall meet the basic workforce center standards set out in §801.25(a) of this subchapter.

(b) In order to obtain certification as a Certified Full-Service Texas Workforce Center, a Texas Workforce Center shall meet full-service standards set out in §801.25(a) and §801.25(b) of this subchapter.

(c) The Commission may establish additional levels of certification to ensure continuous development of the One-Stop Service Delivery Network.

The provisions of this §801.24 adopted to be effective October 18, 2006, as published in the Texas Register, October 13, 2006, 31 TexReg 8563.

§801.25. Texas Workforce Center Standards.

(a) Basic Workforce Center Standards. The Commission has established basic standards that shall be met by all Texas Workforce Centers. Certified Texas Workforce Centers shall:

(1) be available to employers, job seekers, and students throughout the workforce area;

(2) provide access to information and services, including employment services, such as referring qualified job seekers to employer job postings;

(3) address individual needs of customers by providing processes for basic or enhanced methods of accessing services;

(4) provide services tailored to meet the needs of employers and job seekers and include: job screening and referral, labor market information, a common intake and eligibility determination process, an independent assessment and service strategy, centralized and continuous case management and counseling, access to Individual Training Account (ITA) services for education and training needs, support services (including access to subsidized child care), student loans, and other forms of financial assistance required to participate in and complete training;

- (5) ensure that developmental services, such as General Educational Development, English as a Second Language, or Basic Education Skills are not provided by Texas Workforce Center staff;
- (6) provide each customer with information on local high-growth, high-demand occupations and industries, projected wage level upon completion of training programs, and performance of training providers when requested;
- (7) implement a flexible and market-driven process for services;
- (8) ensure access throughout the workforce area by developing electronic methods for service delivery, such as the Internet;
- (9) ensure that staff is experienced and knowledgeable in all required services for employers and job seekers;
- (10) implement a tiered service delivery strategy that includes self-directed service, job search assistance in group settings, access to information on filing a claim for Unemployment Insurance benefits, and specialized, enhanced staff-assisted services;
- (11) prepare and make available to customers understandable information packages that briefly describe services; locations; self-directed options; job openings; career exploration methods; labor market information; high-growth, high-demand job information; training and educational opportunities, and associated institutional performance information; and that also provide a mechanism for feedback on services provided;
- (12) implement a timely and efficient referral and follow-up process for employment-related services;
- (13) provide independent assessments of individual needs that include assessment of literacy levels for Choices customers;
- (14) maintain a user-friendly resource center that makes available computerized information systems with access to labor market information, demographics, occupations, educational opportunities, and WorkInTexas.com, the statewide job matching system;
- (15) administer services, as set forth in §801.28(a), of the following programs: WIA Adults, Dislocated Workers, and Youth; Food Stamp Employment and Training (FSE&T); Temporary Assistance for Needy Families (TANF) Choices; access to subsidized child care services; Wagner-Peyser Employment Service (ES); Trade Adjustment Assistance (TAA); and Project Reintegration of Offenders (Project RIO). Boards shall ensure that staff is available to provide these services during all Texas Workforce Center operating hours;
- (16) provide access to services, as set forth in §801.28(a), of the following programs: veterans' employment and training; Adult Basic Education; National Literacy Act; noncertificate, postsecondary career and technology training; Senior Community Service Employment Program; Apprenticeship Training Program; National and Community Service Act; and Unemployment Insurance;
- (17) ensure availability through the Texas Workforce Centers of other services for the programs listed in paragraph (15) of this section;
- (18) provide reasonable accommodation and accessibility in accordance with the Americans with Disabilities Act;

- (19) ensure that federal qualified veterans and qualified spouses, and state qualified veterans, receive priority as set forth in §801.31 of this subchapter;
 - (20) ensure that eligible foster youth receive priority as set forth in §801.31 of this subchapter;
 - (21) comply with the provisions of the memorandum of understanding between the Board and DFPS to further the objectives of the Preparation for Adult Living program, as required by Texas Family Code §264.121; and
 - (22) meet each of the requirements for Certified Full-Service Texas Workforce Centers within twelve months of certification as a Texas Workforce Center.
- (b) Full-Service Standards. The Commission has established specific standards for a Texas Workforce Center to receive full-service certification. A Certified Full-Service Texas Workforce Center shall meet each of the following requirements within twelve months of certification as a Texas Workforce Center. Certified Full-Service Texas Workforce Centers shall:
- (1) design a customer-friendly waiting area and implement written procedures that define the steps taken to minimize customer wait time in the reception area and in other areas of the Texas Workforce Center;
 - (2) develop written procedures for following up on referrals to determine customer receipt of services, appropriateness of the referral to address the customer's needs, and the extent of customer satisfaction with the referral process and service received;
 - (3) provide customer access to WorkInTexas.com; resume preparation tools, including software; and the Internet;
 - (4) provide consumer information on the quality of education and training providers and include a mechanism for customer feedback on personal experience with such providers;
 - (5) develop and display a menu of services with a corresponding fee schedule for services available at the Certified Full-Service Texas Workforce Center;
 - (6) demonstrate on-site management of all personnel, a plan for cross-training staff in all services, minimal programmatic specialization of staff, nonduplication of efforts, removal of redundancies within program activities, and maximum flexibility to optimize utilization of resources;
 - (7) provide basic labor exchange services, including access to job orders for applicants, access to applicants for employers, and screening and referral methods for matching appropriate applicants and job orders; and
 - (8) provide centralized case management activities for specialized populations, such as the welfare, veterans, dislocated workers, and disabled populations.

The provisions of this §801.25 adopted to be effective October 18, 2006, as published in the Texas Register, October 13, 2006, 31 TexReg 8563.

§801.26. One-Stop Innovation Plan.

Repeal of the provisions of this §801.26 was adopted to be effective October 18, 2006, as published in the Texas Register, October 13, 2006, 31 TexReg 8563.

§801.27. Texas Workforce Center Partners.

- (a) Each Board shall maintain one or more memorandum of understanding that sets out the obligations of the Board and each partner in the operation of the One-Stop Service Delivery

Network in the workforce area. Each Board shall obtain a general authorization from the CEOs for actions taken under this subsection.

- (b) Subject to the limitations referenced in §801.29 of this subchapter, relating to Limitations on Delivery of Services, the required Texas Workforce Center Partners are the entities that administer the following services in the workforce areas:
- (1) WIA Adults, Dislocated Workers, and Youth;
 - (2) FSE&T;
 - (3) TANF Choices;
 - (4) subsidized child care;
 - (5) Wagner-Peyser ES;
 - (6) TAA;
 - (7) veterans' employment and training;
 - (8) Adult Basic Education;
 - (9) National Literacy Act;
 - (10) noncertificate, postsecondary career and technology training;
 - (11) Senior Community Service Employment Program;
 - (12) Apprenticeship Training Program;
 - (13) National and Community Service Act;
 - (14) Project RIO; and
 - (15) Unemployment Insurance.
- (c) Other entities that provide services of benefit to workforce development, including federal, state, and local programs as well as programs in the private sector, may be voluntary partners in the One-Stop Service Delivery Network if the Board and CEOs agree on each entity's participation. The entities include, but are not limited to, those that provide:
- (1) vocational rehabilitation services (for example, the Texas Department of Assistive and Rehabilitative Services);
 - (2) Migrant and Seasonal Farmworker employment services;
 - (3) secondary and postsecondary vocational education and training activities;
 - (4) community services block grant programs;
 - (5) employment and training services provided through grantees of the U. S. Department of Housing and Urban Development;
 - (6) Job Corps services for youth; and
 - (7) Native American programs.

The provisions of this §801.27 adopted to be effective October 18, 2006, as published in the Texas Register ,October 13, 2006, 31 TexReg 8563.

§801.28. Services Available Through the One-Stop Service Delivery Network.

- (a) Core Services. All Certified Texas Workforce Centers shall provide access to core services, as defined in WIA §134(d)(2) (29 U.S.C.A. §2864 (d)(2)) and Texas Government Code, Chapter 2308, including:
- (1) outreach;
 - (2) intake, which may include reemployment services, and orientation to the information and services available through the One-Stop Service Delivery Network;
 - (3) determinations of individuals' eligibility for programs funded through the Commission that are available through the One-Stop Service Delivery Network;
 - (4) initial assessment of skill levels, aptitudes, abilities, and support service needs;
 - (5) job search and placement assistance and, where appropriate, career counseling;
 - (6) provision of performance information and program cost information on eligible providers of training services as described in §§841.31–841.47 of this title (relating to Training Provider Certification), provided by program, and eligible providers of youth activities described in WIA §123 (29 U.S.C.A. §2843), providers of adult education described in Title II of WIA, providers of postsecondary vocational education activities and vocational education activities available to school dropouts under the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C.A. §2301 et seq.), and providers of vocational rehabilitation program activities described in Title I of the Rehabilitation Act of 1973 (29 U.S.C.A. §720 et seq.);
 - (7) provision of information regarding how the workforce area is performing on the local performance measures and any additional performance information with respect to the One-Stop Service Delivery Network in the workforce area;
 - (8) provision of information regarding filing claims for Unemployment Insurance;
 - (9) provision of employment statistics information, including the provision of accurate information relating to local, regional, and national labor market areas, including job vacancy listings in such labor market areas, information on job skills necessary to obtain the jobs listed, and information related to local high-growth, high-demand jobs and the earnings and skill requirements for such jobs;
 - (10) provision of accurate information relating to the availability of support services, including child care and transportation, available in the workforce area, and referral to such services, as appropriate;
 - (11) assistance in establishing eligibility for Choices, FSE&T, and programs of financial aid assistance for training and education that are available in the workforce area; and
 - (12) follow-up services, including counseling regarding the workplace, for youth participants in WIA activities authorized under Chapter 841 of this title, relating to WIA, who are placed in unsubsidized employment, for not less than 12 months after the first day of the employment, as appropriate.
- (b) Intensive Services. A One-Stop Service Delivery Network shall provide access to services as described in the Texas Government Code, Chapter 2308, and intensive services as described in WIA §134(d)(3) (29 U.S.C.A. §2864(d)(3)), which may include the following:

- (1) comprehensive and specialized assessments of the skill levels and service needs of job seekers, such as diagnostic testing and use of other assessment tools, in-depth interviewing, and evaluation to identify employment barriers and employment goals;
 - (2) development of an Individual Employment Plan and service strategy to identify the employment goals, appropriate achievement objectives, and appropriate combination of services for the participant to achieve employment goals and objectives;
 - (3) group counseling;
 - (4) individual counseling and career planning;
 - (5) centralized and continuous case management; and
 - (6) short-term prevocational services, including learning skills, communication skills, interviewing skills, punctuality, personal maintenance skills, and professional conduct to prepare individuals for unsubsidized employment or training.
- (c) Training Services. A One-Stop Service Delivery Network shall provide access to training services as described in WIA §134(d)(4) (29 U.S.C.A. §2864(d)(4)) and Texas Government Code, Chapter 2308. Training services may include the following:
- (1) high-growth, high-demand industry skills training, including training for nontraditional employment;
 - (2) on-the-job training;
 - (3) programs that combine workplace training with related instruction;
 - (4) training programs operated by the private sector;
 - (5) skills upgrading and retraining;
 - (6) entrepreneurial training;
 - (7) job readiness training;
 - (8) referrals to Adult Basic Education and literacy activities in combination with services with activities described in paragraphs (1)–(7) of this subsection; and
 - (9) customized training conducted with a commitment by an employer or group of employers to employ an individual upon successful completion of training.
- (d) Other Services and Activities. A One-Stop Service Delivery Network shall offer access to all other permissible local employment and training activities included in the local workforce development plan, which may include discretionary one-stop activities, support services, and needs-related payments as set forth in WIA 134(e) § (29 U.S.C.A. §2864(e)).

The provisions of this §801.28 adopted to be effective October 18, 2006, as published in the Texas Register, October 13, 2006, 31 TexReg 8563.

§801.29. Limitations on Delivery of Services.

Delivery of services under §801.28 of this title, relating to Services Available Through the One-Stop Service Delivery Network, is subject to state law requirements on Board organization and service delivery structure as found in Texas Government Code, Chapter 2308, and this chapter, as well as eligibility requirements and limitations of individual programs.

The provisions of this §801.29 adopted to be effective October 18, 2006, as published in the Texas Register, October 13, 2006, 31 TexReg 8563.

§801.31. Priority for Workforce Services.

- (a) Boards shall ensure that federal qualified veterans and qualified spouses, state qualified veterans, and eligible foster youth who are entitled to receive priority over all other equally qualified individuals in the receipt of workforce services are:
 - (1) determined eligible for priority at the initial point of contact; and
 - (2) notified of their entitlement to a priority.
- (b) Boards shall ensure that state qualified veterans receive priority over all other equally qualified individuals in the receipt of training or assistance under employment assistance or job training services funded in whole or in part by state funds in accordance with Texas Government Code §657.002(a).
- (c) Boards shall ensure that federal qualified veterans and qualified spouses, as defined in §801.23(4), continue to receive priority over all other equally qualified individuals in the receipt of services funded in whole or in part by the U.S. Department of Labor, in accordance with 38 U.S.C. §4215.
- (d) Boards shall ensure that eligible foster youth receive priority over all other equally qualified individuals—except federal qualified veterans, qualified spouses, and state qualified veterans as defined in this chapter—in the receipt of federal and state funded services.

The provisions of this new §801.31 adopted to be effective October 18, 2006, as published in the Texas Register, October 13, 2006, 31 TexReg 8563.

§801.33. Advertising.

Repeal of the provisions of this §801.33 was adopted to be effective November 20, 2007, as published in the Texas Register, November 16, 2007, 32 TexReg 8318.

SUBCHAPTER C. THE INTEGRITY OF THE TEXAS WORKFORCE SYSTEM

§801.51. Purpose and General Provisions.

- (a) The purpose of the rules contained in this subchapter is to implement Texas Government Code, §2308.264 and §2308.267, including provisions relating to directly delivering services, Board contracting guidelines, and other conflict of interest provisions.
- (b) It is the intent of the Commission that these rules strengthen the confidence of the public in the Texas workforce system.
- (c) A Board may set local policies that are more restrictive than those set forth in this subchapter.
- (d) A Board shall develop the policies and procedures required by this subchapter.
- (e) A Board member with an existing contract for workforce services shall comply with this subchapter no later than the earliest of the following:
 - (1) the expiration of the contract;
 - (2) the contract renewal date; or
 - (3) the expiration of the Board member's term or the Board member's resignation.
- (f) Pursuant to Texas Government Code, Chapter 551 (Open Meetings Act), a Board shall:
 - (1) post appropriate notice;

- (2) ensure that all public business or public policy over which the Board has supervision or control is discussed, considered, or acted upon during a properly posted and convened open meeting; and
- (3) prepare and retain minutes or tape recordings of each open meeting of the Board. The minutes shall:
 - (A) state the subject of each deliberation; and
 - (B) indicate each vote, order, decision, or other action taken.

The provisions of this §801.51 adopted to be effective October 18, 2006, as published in the Texas Register, October 13, 2006, 31 TexReg 8563.

§801.52. Definitions.

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

- (1) Appearance of a conflict of interest -- A circumstance in which the action of a Board member, Board employee, workforce service contractor, or workforce service contractor employee in a decision-making position appears to be:
 - (A) influenced by considerations of one or more of the following: gain to the person, entity, or organization for which the person has an employment interest, substantial financial interest, or other interest, whether direct or indirect (other than those consistent with the terms of the contract); or
 - (B) motivated by design to gain improper influence over the Commission, the Agency, or the Board.
- (2) Board decision-making position -- A position with a Local Workforce Development Board that has final decision-making authority or final recommendation authority on matters that directly affect workforce service contractors. A Board decision-making position is one that performs the function of a Board's executive director, deputy executive director, chief financial officer, lead contract manager, or lead contract monitor.
- (3) Conflict of interest -- A circumstance in which a Board employee, workforce service contractor, or workforce service contractor's employee is in a decision-making position and has a direct or indirect interest, particularly a substantial financial interest, that influences the individual's ability to perform job duties and fulfill responsibilities.
- (4) Particular matter -- A specific investigation, application, request for a ruling or determination, rule-making proceeding, administrative proceeding, contract, claim, or judicial proceeding, or any other proceeding as defined in §572.054(h)(2), Texas Government Code.
- (5) Substantial financial interest -- An interest in a business entity in which a person:
 - (A) owns 10% or more of the stock, shares, fair market value, or other interest in the business entity;
 - (B) owns more than \$5,000 of the fair market value of the business entity;
 - (C) owns real property if the interest is an equitable or legal ownership with a fair market value of \$2,500 or more used for the business entity;

- (D) receives funds from the business entity that exceed 10% of the person's gross income for the previous year;
 - (E) is a compensated member of the board of directors or other governing board of the business entity;
 - (F) serves as an elected officer of the business entity; or
 - (G) is related to a person in the first degree by consanguinity or affinity, as determined under Chapter 573, Texas Government Code, who has a substantial financial interest in the business entity, as listed in subparagraphs (A) through (F) of this section. First degree of consanguinity or affinity means the person's parent, child, adopted child, or spouse.
- (6) Workforce service contractor -- A business entity or person, except a state agency or an institution of higher education as defined in §61.003 of the Texas Education Code, that contracts with a Board to provide one or more of the workforce services listed in §801.28 of this chapter, which include core, intensive, training, and other support services such as child care and transportation.
- (7) Workforce service contractor employee in a decision-making position -- A position with a workforce service contractor that includes the ability to commit or bind the contractor to a particular course of action with respect to carrying out the contractor's duties and activities under the contract.

The provisions of this §801.52 adopted to be effective May 16, 2004, as published in the Texas Register, May 14, 2004, 29 TexReg 4899.

§801.53. Prohibition Against Directly Delivering Services.

- (a) A Board shall ensure, through the oversight and management of Board policies, that it does not directly deliver or determine eligibility for workforce services in its local workforce development area (workforce area) or contract with the following persons or entities to deliver or determine eligibility for workforce services:
- (1) a Board member;
 - (2) a business, organization, or institution that a Board member represents on the Board;
 - (3) a Board member's business, organization, or institution in which a Board member has a substantial financial interest; or
 - (4) a Board employee.
- (b) The prohibitions in this section do not apply to public education agencies, such as community colleges and independent school districts, that have Board members who fulfill the requirements set forth in Texas Government Code §2308.256(a)(3)(A).
- (c) A Board may grant a one-year exception to the prohibitions described in subsection (a) of this section for a community-based organization that fulfills the requirements set forth in Texas Government Code §2308.256(a)(2). The exception can only be granted by a two-thirds vote of the members present in an open meeting and may not be granted for contracts for the operation of Texas Workforce Centers.
- (d) A Board shall ensure that the Board, its members, or its employees do not directly control the daily activities of its workforce service contractors. The Agency shall review a Board's compliance through an examination of the Board's exercise of direction and control over its

workforce service contractors. The Agency may use the factors for testing the employment status as set out in §821.5 of this title.

- (e) Nothing in this section restricts a Board member or a Board member's organization from receiving Texas workforce system services and thereby being a customer of a Board's workforce service contractors' services.

The provisions of this §801.53 adopted to be effective May 16, 2004, as published in the Texas Register, May 14, 2004, 29 TexReg 4899.

§801.54. Board Contracting Guidelines.

(a) Fiscal Integrity Provisions.

- (1) A Board shall develop fiscal integrity evaluation indicators designed to appraise the fiscal integrity of its workforce service contractors.
- (2) A Board shall assess its workforce service contractors to ensure the contractors meet the requirements of the Board's fiscal integrity evaluation based on the following schedule:
 - (A) contracts under \$100,000-the fiscal indicators must be verified prior to the award of the contract and at each renewal of the contract;
 - (B) contracts between \$100,000 and \$500,000-the fiscal indicators must be verified prior to the award of the contract, at each renewal of the contract, and not less than biennially; and
 - (C) contracts over \$500,000-the fiscal indicators must be verified prior to the award of the contract, at each renewal of the contract, and not less than once annually.
- (3) The fiscal integrity evaluation shall include the following provisions for ensuring that workforce service contractors are meeting performance measures in compliance with requirements contained in:
 - (A) federal and state statutes and regulations and directives of the Commission or Agency;
 - (B) Office of Management and Budget (OMB) circulars applicable to the entity, such as OMB Circulars A-21, A-87, or A-122, and the Office of the Governor's *Uniform Grant Management Standards*; and
 - (C) any other safeguards a Board has identified that are designed to ensure the proper and effective use of funds placed under the control of its workforce service contractors.
- (4) The fiscal integrity evaluation shall also include the review and consideration of the prospective or renewing workforce service contractor's prior three-year financial history before the Board awards or renews a workforce service contract. The review shall include any adverse judgments or findings, such as administrative audit findings; Commission, Agency, or Board monitor findings; or sanctions by a Board or court of law.
- (5) The fiscal integrity evaluation may include provisions such as accounting for program income in accordance with federal regulations, resolving questioned costs and the repayment of disallowed costs in a timely manner, and safeguarding fixed assets, as well as those referenced in the Texas Workforce Commission's Financial Manual for Grants and Contracts.

(b) Bonding, Insurance, and Other Methods of Securing Funds to Cover Losses.

- (1) A Board shall ensure that at least 10% of the funds subject to the control of the workforce service contractors is protected through bonds, insurance, escrow accounts, cash on deposit, or other methods to secure the funds consistent with this subchapter. A Board and its workforce service contractors may, consistent with this section, use any method or combination of methods to meet this requirement. At the Board's discretion, the Board may pay for the bonding, insurance, or other protection methods or require its workforce service contractors, to the extent allowable under state and federal law, to pay for such protection.
 - (2) In conducting the fiscal integrity evaluation required in this section, a Board may determine that more than 10% of the funds subject to the control of its workforce service contractors shall be secured through bonds, insurance, escrow accounts, or other methods consistent with this subchapter.
 - (3) Escrow of funds may also be used to satisfy the requirements of §801.54(b) provided that:
 - (A) the funds placed in escrow require the signature of persons other than the persons with signatory authority for the Board's workforce service contractors;
 - (B) the funds do not lapse due to requirements for timely expenditure of funds; and
 - (C) this provision does not conflict with any provision in contract, rule, or statute for the timely expenditure of funds.
 - (4) If a bond is used, a Board shall ensure that the bond is executed by a corporate surety or sureties holding certificates of authority, authorized to do business in the state of Texas.
 - (5) A Board shall ensure, based on the schedule referenced in §801.54(a)(2) of this section, that each of its workforce service contractors is required to verify that:
 - (A) the insurance or bond policy is valid, premiums are paid to date, the company is authorized to provide the bonding or insurance, and the company is not in receivership, bankruptcy or some other status that would jeopardize the ability to draw upon the policy;
 - (B) the escrow account balances are at an appropriate level;
 - (C) the method of securing the funds has not been withdrawn, drawn upon, obligated for another purpose, or is no longer valid for use as the method of security; and
 - (D) other such protections as are applicable and relied upon by the Board are verified as in force.
 - (6) A Board shall ensure that the workforce service contractors are required to disclose any changes in and circumstances regarding the method of securing or protecting the funds under the workforce service contractors' control.
- (c) Standards of Conduct. A Board shall ensure that the workforce service contractors:
- (1) comply with federal and state statutes and regulations regarding standards of conduct and conflict of interest provisions including, but not limited to, the following:
 - (A) 29 C.F.R. §97.36(b)(3), which includes requirements from the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;
 - (B) professional licensing requirements, when applicable; and
 - (C) applicable OMB circular requirements and the Office of the Governor's *Uniform Grant Management Standards*.

- (2) avoid any conflict of interest or any appearance of a conflict of interest; and
 - (3) refrain from using nonpublic information gained through a relationship with the Commission, an Agency employee, a Board, or a Board employee, to seek or obtain financial gains that would be a conflict of interest or the appearance of a conflict of interest.
- (d) Disclosures. A Board shall require its workforce service contractors to disclose the following:
- (1) Matters Subject to Disclosure. A Board shall ensure that its workforce service contractors promptly disclose in writing the following:
 - (A) a substantial financial interest that the workforce service contractor, or any of its workforce service contractor employees in decision-making positions, have in a business entity that is a party to any business transaction with a Board member or Board employee who is in a Board decision-making position;
 - (B) a gift greater than \$50 in value given to a Board member or Board employee by a workforce service contractor or its employees; and
 - (C) the existence of any conflict of interest and any appearance of a conflict of interest, or the lack thereof.
 - (2) Content of Disclosure. A Board shall ensure that its workforce service contractors' written disclosures contain the following:
 - (A) information describing the conflict of interest; and
 - (B) information describing the appearance of a conflict of interest, and actions the workforce service contractor and its employees will take in order to prevent any conflict of interest from occurring.
 - (3) Frequency of Disclosure. A Board shall ensure that its workforce service contractors disclose:
 - (A) at least annually, and as frequently as necessary, any conflict of interest and any appearance of a conflict of interest;
 - (B) within 10 days of giving a gift greater than \$50 in value as referenced in this section; and
 - (C) at least annually that no conflict of interest and no appearance of a conflict of interest exists.
 - (4) Matters Not Subject to Disclosure. This provision does not apply to:
 - (A) a financial transaction performed in the course of a contract with the Board; or
 - (B) a transaction or benefit that is made available to the general public under the same terms and conditions.

The provisions of this §801.54 adopted to be effective May 16, 2004, as published in the Texas Register, May 14, 2004, 29 TexReg 4899.

§801.55. Employment of Former Board Employees by Workforce Service Contractors.

- (a) Post-Employment Restriction. In order to avoid a conflict of interest, a Board shall ensure that the Board's workforce service contractors shall not employ or otherwise compensate a former Board employee who:
 - (1) was in a Board decision-making position as defined in §801.52 of this subchapter; and

- (2) was employed or compensated by the Board anytime during the previous 12 months.
- (b) Exceptions. Where there is no actual conflict of interest, but there is an appearance of such a conflict, a Board in an open meeting may provide for an exception to the period described in subsection (a) of this section by a vote of two-thirds of the membership present. In making such a determination, the Board shall assess all relevant factors, including but not limited to, whether there is a critical need for the skills involved, the relative cost and availability of alternatives, and the need to protect the integrity and stability of the Texas workforce system. In such an instance, the Board shall impose whatever terms and conditions it deems necessary to mitigate the appearance of a conflict of interest.
 - (c) Corrective Actions. A Board shall ensure that its contracts with workforce service contractors require compliance with this section and provide effective enforcement mechanisms allowing it to impose corrective actions, up to and including contract termination, for violation of this section.
 - (d) Particular Matter. A Board shall ensure that its workforce service contractors shall not employ or otherwise compensate a former Board employee to work on a particular matter that the employee worked on for the Board, as defined in §801.52 of this subchapter. Nothing in this section shall prohibit a Board's workforce service contractor from employing or otherwise compensating a former employee of the Board who worked on a particular matter for the Board as long as the former Board employee **never** works on that same particular matter once employed or otherwise compensated by the Board's workforce service contractor.

The provisions of this §801.55 adopted to be effective May 16, 2004, as published in the Texas Register, May 14, 2004, 29 TexReg 4899.

§801.56. Enforcement.

If a Board fails to adhere to the provisions of this subchapter, the Agency may impose corrective actions, up to and including sanctions.

The provisions of this §801.56 adopted to be effective May 16, 2004, as published in the Texas Register, May 14, 2004, 29 TexReg 4899.