

1 **CHAPTER 800. GENERAL ADMINISTRATION**

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

7 **ON NOVEMBER 12, 2013, THE TEXAS WORKFORCE COMMISSION PROPOSED THE**  
8 **BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.**

9  
10 Estimated Publication Date of the Proposal in the *Texas Register*: **November 29, 2013**  
11 Estimated End of Comment Period: **December 30, 2013**

12  
13 The Texas Workforce Commission (Commission) proposes the following new sections to  
14 Chapter 800, relating to General Administration:

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

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

20  
21 Subchapter A. General Provisions, §800.2

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

- 23  
24 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**  
25 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**  
26 **PART III. IMPACT STATEMENTS**  
27 **PART IV. COORDINATION ACTIVITIES**

28  
29 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

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

33  
34 SB 307 mandates that the Commission:

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

44  
45 In addition, SB 307 mandates that the Agency use a competitive procurement process to award  
46 contracts to service providers of local education programs. To complete a competitive

1 procurement and have contracts in place by July 2014, a January 2014 target date has been set  
2 for the adoption of new Chapter 805, regarding AEL programs.

3  
4 Further, to fully incorporate AEL programs into the Agency's administrative oversight  
5 framework, amendments are necessary in Chapter 802, regarding Integrity of the Texas  
6 Workforce System. To ensure a seamless transition of rules, the Chapter 802 amendments and  
7 new Chapter 805 are proposed concurrently with this rulemaking.

8  
9 To better understand the major issues currently facing adult education, the Commission held a  
10 series of nine public meetings across the state to hear from stakeholders concerning the transfer  
11 of the AEL programs from TEA to the Agency, and to gather input about what is currently  
12 working well and where there is opportunity for improvement. AEL stakeholder communication  
13 has continued throughout the transition, and the Commission greatly values the thoughts,  
14 recommendations, and suggestions provided by the AEL stakeholder community.

15  
16 The purpose of the proposed Chapter 800 amendments is to:

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

18 --allocations;

19 --midyear deobligation of funds;

20 --voluntary deobligation of funds; and

21 --make necessary technical changes.

## 22 23 24 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

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

### 27 28 **SUBCHAPTER A. GENERAL PROVISIONS**

29 **The Commission proposes the following amendments to Subchapter A:**

#### 30 31 **§800.2. Definitions**

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

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

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

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

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

39  
40 New §800.2(15)(J) defines the AEL program year as July 1 - June 30.

41  
42 Certain paragraphs in this section have been renumbered to accommodate additions.

### 43 44 **SUBCHAPTER B. ALLOCATIONS**

45 **The Commission proposes the following amendments to Subchapter B:**

1 **§800.51. Scope and Purpose**

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

4  
5 Section 800.51(c) adds "an AEL grant recipient" as an entity with which the Commission will  
6 negotiate allocated amounts for contract periods of less than a complete year, based on the  
7 remaining months of the program year.

8  
9 **§800.52. Definitions**

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

11  
12 Section 800.52(5) adds "an AEL grant recipient" to the definition of "deobligation."

13  
14 Section 800.52(8) adds "an AEL grant recipient" to the definition of "monthly expenditure  
15 report."

16  
17 **New §800.68. Adult Education and Literacy**

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

24  
25 Historically, TEA has only reserved federal funds to support state administration and leadership  
26 activities. Federal state leadership funds may be used to support or facilitate linkages between  
27 adult education and training, including professional development and technical assistance,  
28 program coordination and integration, and coordination with existing support services, such as  
29 transportation and child care. However, these funds specifically cannot be used for the delivery  
30 of technical skills training.

31  
32 Each year, after funds had been set aside for state administration and leadership purposes, TEA  
33 allocated state and federal AEL funds to grantees largely based upon prior funding levels,  
34 proportionate share of need, and performance. Each grantee's total allocation comprised a base  
35 allocation and a performance allocation. Historically, base allocations remained constant from  
36 year to year while performance allocations varied based on individual program performance.  
37 Stakeholders expressed concerns that the allocation formulas did not truly determine  
38 proportionate share of need, were difficult to understand, and included overly complex  
39 performance methodology.

40  
41 It is the Commission's intent to provide a clear, easily understood allocation methodology in rule  
42 to alleviate these concerns and to clarify any issues surrounding transparency of the methodology  
43 or the logic of the distribution of available funds.

44  
45 Based on legislative authorization and stakeholder input, there is a clear need to fund the  
46 development and piloting of innovative methods for delivering services, including the

1 identification of effective uses of technology. Coupled with ensuring that funding is available to  
2 meet SB 307's expectation that integrated adult education and skills training models be  
3 developed, the rules provide that in addition to the federal funds allowed for state leadership and  
4 administration--12.5 percent for state leadership activities and 5 percent for administration--a  
5 maximum amount of state adult education funds and federal Temporary Assistance for Needy  
6 Families (TANF) funds also may be used for those purposes. Consistent with other workforce  
7 funding sources, an amount not to exceed 20 percent of state and federal TANF funds can be  
8 reserved for state administration and leadership activities.

9  
10 The Commission recognizes that local workforce development areas (workforce areas) will  
11 require a meaningful investment in capacity-building efforts to support the seamless alignment of  
12 adult education and literacy and technical training for industry certifications and  
13 degrees. Capacity-building efforts such as curriculum development, technical assistance,  
14 professional development, and demonstration projects using innovative concurrent training  
15 models will support local system change and alignment. The Commission's goals for  
16 investments in technology and other capacity-building efforts from a statewide perspective are  
17 increases in direct service delivery over time and improvements in the overall outcomes for  
18 students. Thus, the Commission believes that reserving an amount not to exceed 20 percent of  
19 state and federal TANF funds may be needed for state leadership purposes to adequately support  
20 these efforts.

21  
22 For federal Adult Education and Family Literacy Act (AEFLA) state grant funds, administrative  
23 costs are limited to 5 percent of the amounts provided to AEL service providers, unless there is  
24 effective justification for the application of the Special Rule in AEFLA §233(b). For state AEL  
25 matching funds and federal TANF funds included in the AEL program, administrative costs will  
26 be limited to 15 percent of amounts provided to AEL service providers.

27  
28 New §800.68 sets forth the allocation methodologies for both federal and state AEL funds,  
29 federal English Literacy/Civics (EL/Civics) funds, federal TANF funds, and state general  
30 revenue appropriated as TANF maintenance-of-effort, after setting aside funds for state  
31 administration and state leadership. The methodologies mirror the federal methodologies used to  
32 allocate funds to the states, as applicable. Texas Labor Code §302.062 provides that if the  
33 Commission block grants funds for workforce training, employment services, and support  
34 services--and if the funds are allocated to the state through the application of established  
35 formulas--then the Commission must allocate amounts available across the state to workforce  
36 areas (which are geographic constructs and are not synonymous with Local Workforce  
37 Development Boards (Boards)) using the same formula used to provide the funds to the state.  
38 This is the practice followed for most of the Commission's block-granted programs. The  
39 Commission is proposing the block granting of AEL funds to the workforce areas based  
40 precisely on the methodology and data the U.S. Department of Education's Office of Vocational  
41 and Adult Education (OVAE) uses to allocate the funds to Texas. A proportion of these  
42 allocations will become available through the achievement of performance benchmarks, which  
43 will reward the performance of AEL service providers.

44  
45 OVAE provides federal AEFLA state grant funds to states using a 90 percent "hold-harmless"  
46 procedure (i.e., the proportion of the state grant to the total of all state grants is at least 90 percent

1 of the prior year's proportion), and the Commission proposes allocating AEL funds using a hold-  
2 harmless procedure. (Additionally, Texas Labor Code §302.062 provides that the 90 percent  
3 hold-harmless provision applies to block grant allocations.)

4  
5 New §800.68(a) states that AEL funds available to the Commission to provide services under  
6 AEFLA, Workforce Investment Act Title II, together with associated state general revenue  
7 matching funds and federal TANF funds--along with any state general revenue funds  
8 appropriated as TANF maintenance-of-effort--will be used by the Commission as set forth in  
9 subsections (b) - (f) of this section.

10  
11 New §800.68(b) provides that at least 82.5 percent of the federal funds constituting the total state  
12 award of AEFLA state grants--including amounts allotted to the eligible agency having a state  
13 plan, as provided by AEFLA §211(c) and amounts provided to the eligible agency under §243  
14 for EL/Civics--will be allocated by the Commission to the workforce areas. From the amount  
15 allotted to the eligible agency having a state plan, as provided by AEFLA §211(c), the  
16 Commission will allocate amounts to the workforce areas according to the established federal  
17 formula, as follows:

18 --(1) 100 percent will be based on:

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

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

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

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

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

33  
34 New §800.68(c) stipulates that at least 80 percent of the state general revenue matching funds  
35 associated with the allotment of federal funds to the eligible agency having a state plan, as  
36 provided by AEFLA §211(c) will be allocated by the Commission to the workforce areas  
37 according to the established federal formula, as follows:

38 --(1) 100 percent will be based on:

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

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

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

45 --(2) No more than 15 percent of the funds expended as part of this workforce area allocation  
46 must be used for administrative costs, as defined by Commission policy.

1 --(3) No more than 10 percent of this allocation must be available for expenditure within each  
2 workforce area on the basis of the achievement of performance benchmarks, as set forth  
3 below.

4  
5 New §800.68(d) provides that at least 82.5 percent of the federal funds provided to the eligible  
6 agency from amounts under AEFLA §243 for EL/Civics will be allocated by the Commission  
7 among the workforce areas according to the established federal formula, as follows:

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

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

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

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

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

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

18 --(5) No more than 10 percent of this allocation must be available for expenditure within each  
19 workforce area on the basis of the achievement of performance benchmarks, as set forth  
20 below.

21  
22 New §800.68(e) provides that at least 80 percent of federal TANF funds associated with the AEL  
23 program--together with any state general revenue funds appropriated as TANF maintenance-of-  
24 effort--will be allocated by the Commission to the workforce areas according to a need-based  
25 formula, as follows:

26 --(1) 100 percent will be based on:

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

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

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

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

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

38  
39 New §800.68(f) states that AEL performance accountability benchmarks must be established to  
40 coincide with performance measures and reports, or other periods, as determined by the  
41 Commission. Levels of performance must, at a minimum, be expressed in an objective,  
42 quantifiable, and measurable form, and show continuous improvement.

43  
44 **§800.71. General Deobligation and Reallocation Provisions**

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

1  
2 Section 800.71(b)(1) adds "Adult Education and Literacy" as a category of funding subject to  
3 §§800.71 - 800.77 of this subchapter.

4  
5 Certain paragraphs in this section have been renumbered to accommodate additions.

6  
7 **§800.72. Reporting Requirements**

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

10  
11 **New §800.78. Midyear Deobligation of AEL Funds**

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

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

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

23 --(2) The Commission must not deobligate more than the difference between an AEL grant  
24 recipient's actual expenditures and the amount corresponding to the relative  
25 proportion of the program year.

26 --(3) The Commission must not deobligate funds from an AEL grant recipient that failed to  
27 meet the expenditure thresholds set forth in subsection (b) of this section, if within  
28 60 days prior to the potential deobligation period the Commission executes a  
29 contract amendment for a supplemental allocation or reallocation of funds in the  
30 same program funding category.

31 --(b) The Commission may deobligate funds midyear, as set forth in subsection (a) of this  
32 section, if an AEL grant recipient fails to achieve the expenditure of an amount  
33 corresponding to 90 percent or more of the relative proportion of the program year.

34 --(c) An AEL grant recipient subject to deobligation for failure to meet the requirements set forth  
35 in this section must, upon request by the Commission, submit a written justification. For an  
36 AEL consortium, a copy must be provided to all consortium members. The written  
37 justification must provide sufficient detail regarding the actions an AEL grant recipient will  
38 take to address its deficiencies, including:

39 --(1) expansion of services proportionate to the available resources;

40 --(2) projected service levels and related performance;

41 --(3) reporting outstanding obligations; and

42 --(4) any other factors an AEL grant recipient would like the Commission to consider.

43 --(d) Any amounts deobligated from an AEL grant recipient must be made available as a first  
44 priority to any other AEL grant recipient(s) providing AEL services within the same  
45 workforce area that meet the requirements of new §800.80(a), upon receipt and approval by  
46 the Commission of an acceptable plan.

1 --(e) To the extent this section may be found not to comply with federal requirements, or should  
2 any related federal waivers expire, the Commission will be subject to federal requirements in  
3 effect, as applicable.  
4

5 **New §800.79. Voluntary Deobligation of AEL Funds**

6 New §800.79 states that to request a voluntary deobligation of funds allocated to the workforce  
7 area, an AEL grant recipient's chief executive officer must submit a written request to the  
8 Commission. For an AEL consortium, a copy must be provided to all consortium members.  
9 Any amounts voluntarily deobligated from an AEL grant recipient must be available as a first  
10 priority to any other AEL grant recipient(s) providing AEL services within the same workforce  
11 area, upon receipt and approval by the Commission of an acceptable plan.  
12

13 **New §800.80. Reallocation of AEL Funds**

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

17 --(a) For an AEL grant recipient to be eligible to receive deobligated AEL funds, the  
18 Commission may consider whether the AEL grant recipient:

19 --(1) has met targeted expenditure levels as required by §800.78(a) of this subchapter, as  
20 applicable, for that period;

21 --(2) has not expended or obligated more than 100 percent of the grant recipient's allocation  
22 for the category of funding;

23 --(3) has demonstrated that expenditures conform to cost category limits for funding;

24 --(4) has demonstrated the need for and ability to use additional funds;

25 --(5) is current on expenditure reporting;

26 --(6) is current with all single audit requirements; and

27 --(7) is not under sanction.

28 --(b) Any amounts deobligated or voluntarily deobligated from an AEL grant recipient must be  
29 made available as a first priority to any other AEL grant recipients providing AEL services  
30 within the same workforce area that meet the requirements of new §800.80(a), upon receipt and  
31 approval by the Commission of an acceptable plan. Following the determination that any such  
32 plan has not been determined to be acceptable, the Commission may consider an AEL grant  
33 recipient satisfying the requirements of subsection (a) of this section, upon receipt and approval  
34 by the Commission of an acceptable plan.  
35

36  
37 **PART III. IMPACT STATEMENTS**

38 Randy Townsend, Chief Financial Officer, has determined that for each year of the first five  
39 years the rules will be in effect, the following statements will apply:  
40

41 There are no additional estimated costs to the state and local governments expected as a result of  
42 enforcing or administering the rules.  
43

44 There are no estimated cost reductions to the state and to local governments as a result of  
45 enforcing or administering the rules.  
46



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

3  
4 There are no foreseeable implications relating to costs or revenue of the state or local  
5 governments as a result of enforcing or administering the rules.

6  
7 There are no anticipated economic costs to persons required to comply with the rules.

8  
9 There is no anticipated adverse economic impact on small or microbusinesses as a result of  
10 enforcing or administering the rules.

11  
12 Economic Impact Statement and Regulatory Flexibility Analysis

13 The Agency has determined that the proposed rules will not have an adverse economic impact on  
14 small businesses as these proposed rules place no requirements on small businesses.

15  
16 Richard C. Froeschle, Director of Labor Market and Career Information, has determined that  
17 there is no significant negative impact upon employment conditions in the state as a result of the  
18 rules.

19  
20 Reagan Miller, Director, Workforce Development Division, has determined that for each year of  
21 the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the  
22 proposed rules will be to provide for the effective administration of AEL services that are  
23 aligned with other services provided through the workforce system.

24  
25 The Agency hereby certifies that the proposal has been reviewed by legal counsel and found to  
26 be within the Agency's legal authority to adopt.

27  
28 **PART IV. COORDINATION ACTIVITIES**

29 In the development of these rules for publication and public comment, the Commission sought  
30 the involvement of Texas' 28 Boards and AEL stakeholders. The Commission provided the  
31 concept paper regarding these rule amendments to the Boards and AEL stakeholders for  
32 consideration and review on September 11, 2013. The Commission also conducted a web inar on  
33 September 19, 2013, to discuss the concept paper. During the rulemaking process, the  
34 Commission considered all information gathered in order to develop rules that provide clear and  
35 concise direction to all parties involved.

36  
37 Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce  
38 Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin,  
39 Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us.  
40 The Commission must receive comments postmarked no later than 30 days from the date this  
41 proposal is published in the *Texas Register*.

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

1 The proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.  
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## CHAPTER 800. GENERAL ADMINISTRATION

### SUBCHAPTER A. GENERAL PROVISIONS

#### §800.2. Definitions.

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

(1) Adult Education and Literacy (AEL)--Services designed to provide adults with sufficient basic education that enables them to effectively:

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

(B) participate in job training and retraining programs;

(C) obtain and retain employment; and

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

(2)~~(4)~~ Agency--The unit of state government established under Texas Labor Code Chapter 301 that is presided over by the Commission and administered by the executive director ~~Executive Director~~ to operate the integrated workforce development system and administer the unemployment compensation insurance program in this state as established under the Texas Unemployment Compensation Act, Texas Labor Code Annotated, Title 4, Subtitle A, as amended. The definition of "Agency" shall apply to all uses of the term in rules contained in this part, or unless otherwise defined, relating to the Texas Workforce Commission that are adopted after February 1, 2001.

(3)~~(2)~~ Allocation--The amount approved by the Commission for expenditures to a local workforce development area during a specified program year, according to specific state and federal requirements.

(4)~~(3)~~ Board--A Local Workforce Development Board created pursuant to Texas Government Code §2308.253 and certified by the governor ~~Governor~~ pursuant to Texas Government Code §2308.261. This includes such a Board when functioning as the Local Workforce Investment Board as described in the Workforce Investment Act §117 (29 U.S.C.A. §2832), including those functions required of a Youth Council, as provided for under ~~the~~ Workforce Investment Act §117(i). The definition of Board ~~Board~~ shall apply to all uses of the term in the rules contained in this part, or unless otherwise defined, relating to the Texas Workforce Commission that are adopted after February 1,

1 2001. Boards are subrecipients as defined in OMB Circular A-133.

2  
3 ~~(5)(4)~~ Child Care--Child care services funded through the Commission, which may  
4 include services funded under the Child Care and Development Fund, WIA,  
5 and other funds available to the Commission or a Board to provide quality  
6 child care to assist families seeking to become independent from, or who are at  
7 risk of becoming dependent on, public assistance while parents are either  
8 working or participating in educational or training activities in accordance with  
9 state and federal statutes and regulations.

10  
11 ~~(6)(5)~~ Choices--The employment and training activities created under §31.0126 of  
12 the Texas Human Resources Code and funded under TANF (42 U.S.C.A. 601  
13 *et seq.*) to assist persons who are receiving temporary cash assistance,  
14 transitioning off, or at risk of becoming dependent on temporary cash  
15 assistance or other public assistance in obtaining and retaining employment.

16  
17 ~~(7)(6)~~ Commission--The body of governance of the Texas Workforce Commission  
18 composed of three members appointed by the governor ~~Governor~~ as established  
19 under Texas Labor Code §301.002 that includes one representative of labor,  
20 one representative of employers, and one representative of the public. The  
21 definition of Commission ~~"Commission"~~ shall apply to all uses of the term in  
22 rules contained in this part, or unless otherwise defined, relating to the Texas  
23 Workforce Commission that are adopted after February 1, 2001.

24  
25 ~~(8)(7)~~ Formal Measures--Workforce development services performance measures  
26 adopted by the governor ~~Governor~~ and developed and recommended through  
27 the Texas Workforce Investment Council (TWIC).

28  
29 ~~(9)(8)~~ Employment Service--A program to match qualified job seekers with  
30 employers through a statewide network of one-stop career centers. (The  
31 Wagner-Peyser Act of 1933 (Title 29 U.S.C., Chapter 4B) as amended by the  
32 Workforce Investment Act of 1998 (P.L. 105-220))

33  
34 ~~(10)(9)~~ Executive Director--The individual appointed by the Commission to  
35 administer the daily operations of the Agency, which may include a person  
36 delegated by the Executive Director to perform a specific function on behalf of  
37 the Executive Director.

38  
39 ~~(11)(10)~~ Local Workforce Development Area (workforce area)--Workforce areas  
40 designated by the governor ~~Governor~~ pursuant to Texas Government Code  
41 §2308.252 and functioning as a Local Workforce Investment Area, as provided  
42 for under ~~the~~ Workforce Investment Act §116 and §189(i)(2) (29 U.S.C.A.,  
43 §2831 and §2939).

44  
45 ~~(12)(11)~~ One-Stop Service Delivery Network--A one-stop-based network under  
46 which entities responsible for administering separate workforce investment,

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

7  
8  
9 (13)~~(12)~~ Performance Measure--An expected performance outcome or result.

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

15  
16 (15)~~(14)~~ Program Year--The twelve-month period applicable to the following as  
17 specified:

18  
19 (A) Child Care: October 1 - September 30;

20  
21 (B) Choices: October 1 - September 30;

22  
23 (C) Employment Service: October 1 - September 30;

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

27  
28 (E) Project RIO: October 1 - September 30;

29  
30 (F) Trade Act services: October 1 - September 30;

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

34  
35 (H) WIA Alternative Funding for Statewide Activities: October 1 -  
36 September 30; ~~and~~

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

40  
41 (J) Adult Education and Literacy: July 1 - June 30.

42  
43 (16)~~(15)~~ Project Reintegration of Offenders (RIO)--A program that prepares and  
44 transitions ex-offenders released from Texas Department of Criminal Justice or  
45 Texas Juvenile Justice Department ~~Texas Youth Commission~~ incarceration into  
46 gainful employment as soon as possible after release, consistent with

1 provisions of the Texas Labor Code, Chapter 306; Texas Government Code  
2 §2308.312; and the Memorandum of Understanding with the Texas  
3 Department of Criminal Justice and the [Texas Juvenile Justice](#)  
4 [Department](#)~~Texas Youth Commission~~.

5  
6 ~~(16)~~ [\(17\)](#) Supplemental Nutrition Assistance Program Employment and Training  
7 (SNAP E&T)--A program to assist SNAP recipients to become self-supporting  
8 through participation in activities that include employment, job readiness,  
9 education, and training, activities authorized and engaged in as specified by  
10 federal statutes and regulations (7 U.S.C.A. §2011), and Chapter 813 of this  
11 title relating to Supplemental Nutrition Assistance Program Employment and  
12 Training.

13  
14 ~~(17)~~ [\(18\)](#) TANF--Temporary Assistance for Needy Families, which may include  
15 temporary cash assistance and other temporary assistance for eligible  
16 individuals, as defined in the Personal Responsibility and Work [Opportunity](#)  
17 ~~Opportunities~~ Reconciliation Act of 1996, as amended (7 U.S.C.A. §201.1 *et*  
18 *seq.*) and the ~~Temporary Assistance for Needy Families~~ [TANF](#) statutes and  
19 regulations (42 U.S.C.A. §601 *et seq.*, 45 Code of Federal Regulations (C.F.R.)  
20 Parts 260 - 265). TANF may also include the TANF State Program (TANF  
21 SP), relating to two-parent families, which is codified in Texas Human  
22 Resources Code, Chapter 34.

23  
24 ~~(18)~~ [\(19\)](#) Trade Act Services--Programs authorized by the Trade Act of 1974, as  
25 amended (and 20 C.F.R. Part 617) providing services to dislocated workers  
26 eligible for Trade benefits through Workforce Solutions Offices.

27  
28 ~~(19)~~ [\(20\)](#) TWIC--Texas Workforce Investment Council, appointed by the [governor](#)  
29 ~~Governor~~ pursuant to Texas Government Code §2308.052 and functioning as  
30 the State Workforce Investment Board (~~SWIB~~), as provided for under ~~the~~  
31 Workforce Investment Act §111(e) (29 U.S.C.A. §2821(e)). In addition,  
32 pursuant to the Workforce Investment Act §194(a)(5) (29 U.S.C.A.  
33 §2944(a)(5)), TWIC maintains the duties, responsibilities, powers, and  
34 limitations as provided in Texas Government Code §§2308.101 - 2308.105.

35  
36 ~~(20)~~ [\(21\)](#) WIA--Workforce Investment Act (P.L. 105-220, 29 U.S.C.A. §2801 *et*  
37 *seq.*). References to WIA include references to WIA formula-allocated funds  
38 unless specifically stated otherwise.

39  
40 ~~(21)~~ [\(22\)](#) WIA Formula-Allocated Funds--Funds allocated by formula to workforce  
41 areas for each of the following separate categories of services: WIA Adult,  
42 Dislocated Worker and Youth (excluding the Secretary's and [governor's](#)  
43 ~~Governor's~~ reserve funds and rapid response funds).

44  
45 ~~(22)~~ [\(23\)](#) Workforce Solutions Offices Partner--An entity that carries out a  
46 workforce investment, educational, or other human resources program or

1 activity, and that participates in the operation of the One-Stop Service Delivery  
2 Network in a workforce area consistent with the terms of a memorandum of  
3 understanding entered into between the entity and the Board.  
4

5  
6 **SUBCHAPTER B. ALLOCATIONS**  
7

8 **§800.51. Scope and Purpose.**  
9

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

1  
2 (f) Notwithstanding any other provision of the rules contained in this part, the level of  
3 funding allocated to a workforce area may be determined, modified, or reallocated  
4 by the Commission for one or more of the following reasons:

- 5  
6 (1) to ensure full utilization of the funding;  
7  
8 (2) to ensure compliance with state ~~State~~ and federal requirements applicable to  
9 the state ~~State~~;  
10  
11 (3) to meet the state's ~~State's~~ federal participation rates;  
12  
13 (4) to respond to caseload changes; or  
14  
15 (5) to respond to unforeseen demographic or economic changes.

16  
17 **§800.52. Definitions.**

18  
19 The following words and terms, when used in this subchapter, shall have the following  
20 meanings, unless the context clearly indicates otherwise:

- 21  
22 (1) Accrued Expenditures--Charges incurred during a given period for goods and  
23 tangible property received and services performed that cause decreases in net  
24 financial resources.  
25  
26 (2) All-Family Participation Rate--The percentage of all families receiving TANF  
27 benefits that a state must engage in an approved work activity for a specified  
28 number of hours per week as provided by the Personal Responsibility and  
29 Work Opportunity ~~Opportunities~~-Reconciliation Act of 1996, §407, as  
30 amended.  
31  
32 (3) Contract Closeout Settlement Package--Financial, performance, and other  
33 reports required as a condition of the contract, which must be submitted when  
34 one of the following conditions is met:  
35  
36 (A) the contract has expired;  
37  
38 (B) all available funds for the contract period have been paid out;  
39  
40 (C) all accrued expenditures chargeable to the specific contract have been  
41 incurred; or  
42  
43 (D) the period of available funds has expired or been terminated.  
44  
45 (4) Contract Period--The length of time in which a contract for allocated funds  
46 between the Commission and a Board or an AEL grant recipient is in effect



1 and during which funds may be expended for a specified purpose, unless  
2 prohibited by a federal grantor agency. A contract period longer than a  
3 program year shall be specified under the terms of a properly executed  
4 contract.

- 5
- 6 (5) Deobligation--An action adopted by the Commission to decrease an amount  
7 for a specific program and contract period in a contract with a Board or an  
8 AEL grant recipient for allocated funds, on the basis of provisions as set forth  
9 in §800.73 and §800.74 of this subchapter ~~the Commission rules~~.
- 10
- 11 (6) Equal Base Amount--An amount equivalent to .10 percent (one-tenth of one  
12 percent) of a total allocation, which shall be provided equally to each  
13 workforce area.
- 14
- 15 (7) Hold Harmless/Stop Gain--A procedure that assures that a relative proportion  
16 of an allocation to a workforce area is not below 90 percent of the  
17 corresponding proportion for the past two years, or that the current year  
18 proportion is not above 125 percent of the prior two-year relative proportion.
- 19
- 20 (8) Monthly expenditure report--A written or electronically submitted report by a  
21 Board or an AEL grant recipient that contains information regarding services  
22 for each category of funding allocated by the Commission, and in which the  
23 Board or an AEL grant recipient lists expenditures and obligations by category  
24 of funding.
- 25
- 26 (9) Obligation--A debt established by a legally binding contract, letter of  
27 agreement, sub-grant award, or purchase order, which has been executed prior  
28 to the end of a contract period, for goods and services provided by the end of  
29 the contract period, and which will be liquidated 60 calendar days after the end  
30 of a contract period, unless such definition is superceded by federal  
31 requirements.
- 32
- 33 (10) Relative proportion of the program year--The corresponding part of the  
34 program year that is used to compare expenditures. That is, if 50 percent of  
35 the program year has transpired, then the relative proportion of the program  
36 year is 50 percent.
- 37
- 38 (11) WIA Formula Allocated Funds--Funds allocated by formula to workforce areas  
39 for each of the following separate categories of funding: WIA Adult,  
40 Dislocated Worker, and Youth.

41  
42 **§800.68 Adult Education and Literacy**

43 (a) AEL funds available to the Commission to provide services under the federal Adult  
44 Education and Family Literacy Act (AEFLA), WIA Title II, together with associated  
45 state general revenue matching funds and federal TANF funds--together with any  
46 state general revenue funds appropriated as TANF maintenance-of-effort--will be

1 used by the Commission as set forth in subsections (b) - (f) of this section.

2  
3 (b) At least 82.5 percent of the federal funds constituting the total state award of AEFLA  
4 state grants--including amounts allotted to the eligible agency having a state plan, as  
5 provided by AEFLA §211(c) and amounts provided to the eligible agency under  
6 §243 for English Literacy/Civics (EL/Civics)--will be allocated by the Commission  
7 to the workforce areas. From the amount allotted to the eligible agency having a  
8 state plan, as provided by AEFLA §211(c), the Commission will allocate amounts to  
9 the workforce areas according to the established federal formula, as follows:

10  
11 (1) 100 percent will be based on:

12  
13 (A) the relative proportion of individuals residing within each workforce area  
14 who are at least 18 years of age, do not have a secondary school diploma  
15 or its recognized equivalent, and are not enrolled in secondary school,  
16 during the most recent period for which statistics are available;

17  
18 (B) an equal base amount; and

19  
20 (C) the application of a hold-harmless procedure (for any program year after  
21 Fiscal Year (FY) 2015).

22  
23 (2) No more than 5 percent of the funds expended as part of this workforce area  
24 allocation shall be used for administrative costs, as defined by AEFLA,  
25 provided, however, that the Special Rule outlined in AEFLA §233(b) shall  
26 apply with effective justification, as appropriate.

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

31  
32 (c) At least 80 percent of the state general revenue matching funds associated with the  
33 allotment of federal funds to the eligible agency having a state plan, as provided by  
34 AEFLA §211(c) will be allocated by the Commission to the workforce areas  
35 according to the established federal formula, as follows:

36  
37 (1) 100 percent will be based on:

38  
39 (A) the relative proportion of individuals residing within each workforce area  
40 who are at least 18 years of age, do not have a secondary school diploma  
41 or its recognized equivalent, and are not enrolled in secondary school,  
42 during the most recent period for which statistics are available;

43  
44 (B) an equal base amount; and

45  
46 (C) the application of a hold-harmless procedure (for any program year after

1 FY 2015).

2  
3 (2) No more than 15 percent of the funds expended as part of this workforce area  
4 allocation shall be used for administrative costs, as defined by Commission  
5 policy.

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

10  
11 (d) At least 82.5 percent of the federal funds provided to the eligible agency from  
12 amounts under AEFLA §243 for EL/Civics will be allocated by the Commission  
13 among the workforce areas according to the established federal formula, as follows:

14  
15 (1) The relative proportion based on:

16  
17 (A) 65 percent of the average number of legal permanent residents during the  
18 most recent 10-year period, available from U.S. Citizenship and  
19 Immigration Services data; and

20  
21 (B) 35 percent of the average number of legal permanent residents during the  
22 most recent three-year period, available from U.S. Citizenship and  
23 Immigration Services data;

24  
25 (2) a base amount of 1 percent for each workforce area; and

26  
27 (3) the application of a hold-harmless procedure (for any program year after FY  
28 2015).

29  
30 (4) No more than 5 percent of the funds expended as part of this workforce area  
31 allocation shall be used for administrative costs, as defined by AEFLA.

32  
33 (5) No more than 10 percent of this allocation shall be available for expenditure  
34 within each workforce area on the basis of the achievement of performance  
35 benchmarks, as set forth in subsection (f) of this section.

36  
37 (e) At least 80 percent of federal TANF funds associated with the AEL program--  
38 together with any state general revenue funds appropriated as TANF maintenance-  
39 of-effort--will be allocated by the Commission to the workforce areas according to a  
40 need-based formula, as follows:

41  
42 (1) 100 percent will be based on:

43  
44 (A) the relative proportion of the unduplicated number of TANF adult  
45 recipients with educational attainment of less than a secondary diploma;  
46 during the most recently completed calendar year;

1  
2 (B) an equal base amount; and

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

6  
7 (2) No more than 15 percent of the funds expended as part of this workforce area  
8 allocation shall be used for administrative costs, as defined by federal  
9 regulations and Commission policy.

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

14  
15 (f) AEL performance accountability benchmarks shall be established to coincide with  
16 performance measures and reports, or other periods, as determined by the  
17 Commission. Levels of performance shall, at a minimum, be expressed in an  
18 objective, quantifiable, and measurable form, and show continuous improvement.

19  
20  
21 **§800.71. General Deobligation and Reallocation Provisions.**

22  
23 (a) Purpose. The purpose of this rule is to promote effective service delivery, financial  
24 planning, and management to ensure full utilization of funding, and to reallocate  
25 funds to populations in need.

26  
27 (b) Scope. Sections 800.71 - 800.77 of this subchapter shall apply to funds provided to  
28 workforce areas under a contract between the Board or an AEL grant recipient and  
29 the Commission for the following categories of funding:

30  
31 (1) Adult Education and Literacy

32  
33 (2)(1) Child Care

34  
35 (3)(2) Choices

36  
37 (4)(3) Employment Service

38  
39 (5)(4) SNAP E&T

40  
41 (6)(5) Project RIO

42  
43 (7)(6) WIA Alternative Funding for Statewide Activities

44  
45 (8)(7) WIA Alternative Funding for One-Stop Enhancements

1       **§800.72. Reporting Requirements.**  
2

- 3       (a) A Board or an AEL grant recipient shall submit a monthly financial report, including  
4       accrued expenditures and obligations, on or before the 20th calendar day of the  
5       following month that list information as required by the Commission for the  
6       reporting period.  
7
- 8       (b) The Commission may require that a Board or an AEL grant recipient amend  
9       expenditure reports as the result of Commission reviews, audits, or other evaluations.  
10
- 11       (c) A Board or an AEL grant recipient shall submit a contract closeout settlement  
12       package on or before 60 days following the end of the contract period.  
13
- 14       (d) The Commission may suspend payments, advances, or reimbursements to Boards or  
15       an AEL grant recipient in the cash draw system if required financial reports or  
16       contract closeout settlement packages are not submitted by the deadline.  
17
- 18       (e) The Agency's executive director~~Executive Director~~ may approve a Board's or an  
19       AEL grant recipient's request of extension for the submission of a required financial  
20       report or contract closeout settlement package, if such extension request is received  
21       on a timely basis with sufficient justification.  
22

23       **§800.78. Midyear Deobligation of AEL Funds.**  
24

- 25       (a) The Commission may deobligate funds from an AEL grant recipient during the  
26       program year if an AEL grant recipient is not meeting the expenditure thresholds set  
27       forth in subsection (b) of this section, provided, however, that the requirements of  
28       subsection (d) of this section are satisfied.  
29
- 30       (1) AEL grant recipients that fail to meet the expenditure thresholds set forth in  
31       subsection (b) of this section at the end of months five, six, seven, or eight of  
32       the program year (i.e., midyear) will be reviewed to determine the causes for  
33       the underexpenditure of funds, except as set forth in subsection (e) of this  
34       section.  
35
- 36       (2) The Commission shall not deobligate more than the difference between an  
37       AEL grant recipient's actual expenditures and the amount corresponding to the  
38       relative proportion of the program year.  
39
- 40       (3) The Commission shall not deobligate funds from an AEL grant recipient that  
41       failed to meet the expenditure thresholds set forth in subsection (b) of this  
42       section, if within 60 days prior to the potential deobligation period the  
43       Commission executes a contract amendment for a supplemental allocation or  
44       reallocation of funds in the same program funding category.  
45
- 46       (b) The Commission may deobligate funds from an AEL grant recipient midyear, as set

1 forth in subsection (a) of this section, if an AEL grant recipient fails to achieve the  
2 expenditure of an amount corresponding to 90 percent or more of the relative  
3 proportion of the program year.

4  
5 (c) An AEL grant recipient subject to deobligation for failure to meet the requirements  
6 set forth in this section shall, upon request by the Commission, submit a written  
7 justification. For an AEL consortium, a copy must be provided to all AEL  
8 consortium members. The written justification shall provide sufficient detail  
9 regarding the actions an AEL grant recipient will take to address its deficiencies,  
10 including:

11  
12 (1) expansion of services proportionate to the available resources;

13  
14 (2) projected service levels and related performance;

15  
16 (3) reporting outstanding obligations; and

17  
18 (4) any other factors an AEL grant recipient would like the Commission to consider.

19  
20 (d) Any amounts deobligated from an AEL grant recipient must be made available as a  
21 first priority to any other AEL grant recipient(s) providing AEL services within the  
22 same workforce area that meet the requirements of §800.80(a) of this subchapter,  
23 upon receipt and approval by the Commission of an acceptable plan.

24  
25 (e) To the extent this section may be found not to comply with federal requirements, or  
26 should any related federal waivers expire, the Commission will be subject to federal  
27 requirements in effect, as applicable.

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

30  
31 To request a voluntary deobligation of funds allocated to the workforce area, an AEL  
32 grant recipient's chief executive officer shall submit a written request to the Commission.  
33 For an AEL consortium, a copy must be provided to all AEL consortium members. Any  
34 amounts voluntarily deobligated from an AEL grant recipient must be made available as  
35 a first priority to any other AEL grant recipient(s) providing AEL services within the  
36 same workforce area that meet the requirements of §800.80(a) of this subchapter, upon  
37 receipt and approval by the Commission of an acceptable plan.

38  
39 **§800.80. Reallocation of AEL Funds.**

40  
41 (a) For an AEL grant recipient to be eligible to receive deobligated AEL funds, the  
42 Commission may consider whether the AEL grant recipient:

43  
44 (1) has met targeted expenditure levels as required by §800.78(a) - (b) of this  
45 subchapter, as applicable, for that period;

1 (2) has not expended or obligated more than 100 percent of the workforce area's  
2 allocation for the category of funding;

3  
4 (3) has demonstrated that expenditures conform to cost category limits for  
5 funding;

6  
7 (4) has demonstrated the need for and ability to use additional funds;

8  
9 (5) is current on expenditure reporting;

10  
11 (6) is current with all single audit requirements; and

12  
13 (7) is not under sanction.

14  
15 (b) Any amounts deobligated or voluntarily deobligated from an AEL grant recipient  
16 shall be made available as a first priority to any other AEL grant recipients providing  
17 AEL services within the same workforce area that meet the requirements of  
18 subsection (a) of this section, upon receipt and approval by the Commission of an  
19 acceptable plan. Following the determination that any such plan has not been  
20 determined to be acceptable, the Commission may consider an AEL grant recipient  
21 satisfying the requirements of subsection (a) of this section, upon receipt and  
22 approval by the Commission of an acceptable plan.