

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 APRIL 5, 2016, THE TEXAS WORKFORCE COMMISSION PROPOSED THE BELOW**
8 **RULES WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS REGISTER.**

9
10 Estimated Publication Date of the Proposal in the *Texas Register*: **April 22, 2016**
11 Estimated End of Comment Period: **May 23, 2016**
12

13 The Texas Workforce Commission (Commission) proposes amendments to the following
14 sections of Chapter 800, relating to General Administration:
15

16 Subchapter B. Allocations, §800.68
17

- 18 PART I. PURPOSE, BACKGROUND, AND AUTHORITY
- 19 PART II. EXPLANATION OF INDIVIDUAL PROVISIONS
- 20 PART III. IMPACT STATEMENTS
- 21 PART IV. COORDINATION ACTIVITIES

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

24 The purpose of the proposed Chapter 800 rule change is to amend Agency rules to clarify that
25 the allocation of Adult Education and Literacy (AEL) funds, pursuant to Texas Labor Code
26 §302.062(d), includes the application of a hold-harmless/stop-gain calculation, as defined in
27 Agency rule §800.52(7). This proposed amendment also strikes an adjacent clause that is now
28 out of date and unnecessary.
29

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

31
32 **SUBCHAPTER B. ALLOCATIONS**

33 **The Commission proposes the following amendments to Subchapter B:**
34

35 **§800.68. Adult Education and Literacy**

36 Section 800.68(b)(1)(C) is amended by:

- 37 --adding the stop-gain option to the hold-harmless procedure; and
- 38 --removing "(for any program year after Fiscal Year (FY) 2015)," as it is no longer relevant.

39
40 Section 800.68(c)(1)(C) is amended by:

- 41 --adding the stop-gain option to the hold-harmless procedure; and
- 42 --removing "(for any program year after Fiscal Year (FY) 2015)," as it is no longer relevant.

43
44 Section 800.68(d)(3) is amended by:

- 45 --adding the stop-gain option to the hold-harmless procedure; and
- 46 --removing "(for any program year after Fiscal Year (FY) 2015)," as it is no longer relevant.

1
2 Section 800.68(e)(1)(C) is amended by:
3 --adding the stop-gain option to the hold-harmless procedure; and
4 --removing "(for any program year after Fiscal Year (FY) 2015)," as it is no longer relevant.
5
6

7 **PART III. IMPACT STATEMENTS**

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

10
11 There are no additional estimated costs to the state or to local governments expected as a result
12 of enforcing or administering the rules.
13

14 There are no estimated cost reductions to the state or to local governments as a result of
15 enforcing or administering the rules.
16

17 There are no estimated losses or increases in revenue to the state or to local governments as a
18 result of enforcing or administering the rules.
19

20 There are no foreseeable implications relating to costs or revenue of the state or local
21 governments as a result of enforcing or administering the rules.
22

23 There are no anticipated economic costs to persons required to comply with the rules.
24

25 There is no anticipated adverse economic impact on small businesses or microbusinesses as a
26 result of enforcing or administering the rules.
27

28 Economic Impact Statement and Regulatory Flexibility Analysis

29 The Agency has determined that the proposed rules will not have an adverse economic impact on
30 small businesses, as these proposed rules place no requirements on small businesses.
31

32 Doyle Fuchs, Director of Labor Market and Career Information, has determined that there is no
33 significant negative impact upon employment conditions in the state as a result of the rules.
34

35 Reagan Miller, Director, Workforce Development Division, has determined that for each year of
36 the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the
37 proposed rules will be to prevent local workforce development areas (workforce areas) from
38 receiving substantially more funding than in a previous year, providing ample time for program
39 capacity building.
40

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

44 **PART IV. COORDINATION ACTIVITIES**

45 In the development of these rules for publication and public comment, the Commission sought
46 the involvement of Texas' 28 Boards. The Commission provided the concept paper regarding

1 these rule amendments to the Boards for consideration and review on November 3, 2015. The
2 Commission also conducted a webinar with Board executive directors and Board staff on
3 November 12, 2015, to discuss the concept paper. During the rulemaking process, the
4 Commission considered all information gathered in order to develop rules that provide clear and
5 concise direction to all parties involved.

6
7 Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce
8 Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin,
9 Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us.
10 Comments must be received or postmarked no later than 30 days from the date this proposal is
11 published in the *Texas Register*.

12
13 The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the
14 Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it
15 deems necessary for the effective administration of Agency services and activities.

16
17 The proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.
18

1 **CHAPTER 800. GENERAL ADMINISTRATION**

2
3 **SUBCHAPTER B. ALLOCATIONS**

4
5 **§800.68. Adult Education and Literacy.**

6
7 (a) AEL funds available to the Commission to provide services under the federal Adult
8 Education and Family Literacy Act (AEFLA), WIA Title II, together with associated
9 state general revenue matching funds and federal TANF funds--together with any
10 state general revenue funds appropriated as TANF maintenance-of-effort--will be
11 used by the Commission, as set forth in subsections (b) - (f) of this section.

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

- 20
21 (1) 100 percent will be based on:
- 22
23 (A) the relative proportion of individuals residing within each workforce area
24 who are at least 18 years of age, do not have a secondary school diploma
25 or its recognized equivalent, and are not enrolled in secondary school,
26 during the most recent period for which statistics are available;
 - 27
28 (B) an equal base amount; and
 - 29
30 (C) the application of a hold-harmless/stop-gain procedure ~~(for any program~~
31 ~~year after Fiscal Year (FY) 2015).~~
- 32
33 (2) No more than 5 percent of the funds expended as part of this workforce area
34 allocation shall be used for administrative costs, as defined by AEFLA,
35 provided, however, that the Special Rule outlined in AEFLA §233(b) shall
36 apply with effective justification, as appropriate.
- 37
38 (3) No more than 10 percent of this allocation shall be available for expenditure
39 within each workforce area on the basis of the achievement of performance
40 benchmarks, as set forth in subsection (f) of this section.

41
42 (c) At least 80 percent of the state general revenue matching funds associated with the
43 allotment of federal funds to the eligible agency having a state plan, as provided by
44 AEFLA §211(c), will be allocated by the Commission to the workforce areas
45 according to the established federal formula, as follows:

46

- 1 (1) 100 percent will be based on:
2
3 (A) the relative proportion of individuals residing within each workforce area
4 who are at least 18 years of age, do not have a secondary school diploma
5 or its recognized equivalent, and are not enrolled in secondary school,
6 during the most recent period for which statistics are available;
7
8 (B) an equal base amount; and
9
10 (C) the application of a hold-harmless/[stop-gain](#) procedure ~~(for any program~~
11 ~~year after FY 2015).~~
12
13 (2) No more than 15 percent of the funds expended as part of this workforce area
14 allocation shall be used for administrative costs, as defined by Commission
15 policy.
16
17 (3) No more than 10 percent of this allocation shall be available for expenditure
18 within each workforce area on the basis of the achievement of performance
19 benchmarks, as set forth in subsection (f) of this section.
20
21 (d) At least 82.5 percent of the federal funds provided to the eligible agency from
22 amounts under AEFLA §243 for EL/Civics will be allocated by the Commission
23 among the workforce areas according to the established federal formula, as follows:
24
25 (1) The relative proportion based on:
26
27 (A) 65 percent of the average number of legal permanent residents during the
28 most recent 10-year period, available from U.S. Citizenship and
29 Immigration Services data; and
30
31 (B) 35 percent of the average number of legal permanent residents during the
32 most recent three-year period, available from U.S. Citizenship and
33 Immigration Services data;
34
35 (2) a base amount of 1 percent for each workforce area; and
36
37 (3) the application of a hold-harmless/[stop-gain](#) procedure ~~(for any program year~~
38 ~~after FY 2015).~~
39
40 (4) No more than 5 percent of the funds expended as part of this workforce area
41 allocation shall be used for administrative costs, as defined by AEFLA.
42
43 (5) No more than 10 percent of this allocation shall be available for expenditure
44 within each workforce area on the basis of the achievement of performance
45 benchmarks, as set forth in subsection (f) of this section.
46

- 1 (e) At least 80 percent of federal TANF funds associated with the AEL program--
2 together with any state general revenue funds appropriated as TANF maintenance-
3 of-effort--will be allocated by the Commission to the workforce areas according to a
4 need-based formula, as follows:
5
6 (1) 100 percent will be based on:
7
8 (A) the relative proportion of the unduplicated number of TANF adult
9 recipients with educational attainment of less than a secondary diploma
10 during the most recently completed calendar year;
11
12 (B) an equal base amount; and
13
14 (C) the application of a hold-harmless/stop-gain procedure ~~(for any program~~
15 ~~year after FY 2015).~~
16
17 (2) No more than 15 percent of the funds expended as part of this workforce area
18 allocation shall be used for administrative costs, as defined by federal
19 regulations and Commission policy.
20
21 (3) No more than 10 percent of this allocation shall be available for expenditure
22 within each workforce area on the basis of the achievement of performance
23 benchmarks, as set forth in subsection (f) of this section.
24
25 (f) AEL performance accountability benchmarks shall be established to coincide with
26 performance measures and reports, or other periods, as determined by the
27 Commission. Levels of performance shall, at a minimum, be expressed in an
28 objective, quantifiable, and measureable form, and show continuous improvement.