

CHAPTER 802. INTEGRITY OF THE TEXAS WORKFORCE SYSTEM

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

ON JULY 18, 2017, THE TEXAS WORKFORCE COMMISSION PROPOSED THE BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated Publication Date of the Proposal in the *Texas Register*: **August 4, 2017**

Estimated End of Comment Period: **September 4, 2017**

The Texas Workforce Commission (TWC) proposes amendments to the following section of Chapter 802, relating to the Integrity of the Workforce System:

Subchapter D. Agency Monitoring Activities, §802.65

PART I. PURPOSE, BACKGROUND, AND AUTHORITY
PART II. EXPLANATION OF INDIVIDUAL PROVISIONS
PART III. IMPACT STATEMENTS
PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 802 rule change is to facilitate the timely issuance of TWC reports following compliance reviews of Local Workforce Development Boards (Boards), Adult Education and Literacy (AEL) grant recipients, and TWC grantees or contractors. The rule change ensures that monitored entities maintain full due process in responding to and resolving any findings or questioned costs. Finally, the rule change clarifies to whom TWC monitoring reports are sent.

Currently, §802.65 requires that, following a monitoring visit, the TWC's Subrecipient Monitoring department (SRM) take the following actions:

- If no issues or questioned costs are identified, issues a management letter and closes the review;
- If there are issues, issues a draft report, which, if the monitored entity responds with documentation resolving the finding, prompts SRM to issue a management letter to close the review; or
- If there are issues and the monitored entity concurs with the draft report finding, issues a final report.

Issuance of the final report transfers monitoring findings and questioned costs to the audit resolution process.

The draft report, which is not required under the uniform grant guidance provisions of 2 CFR Part 200, was intended to allow monitored entities the opportunity to provide input into potential

administrative findings and questioned costs, which would then be considered by SRM before issuance of the final report. As a practical matter, the draft report has become *de facto* audit resolution and has the effect of delaying the final report. Additionally, if findings or questioned costs remain in the final report, audit resolution simply resumes.

In contrast, when the US Department of Labor (DOL) audits grantees and subrecipients, DOL's audit team issues one monitoring report and gives the monitored entity 45 calendar days to address the findings. When all findings have been resolved, DOL issues a monitoring closure letter. This approach provides a streamlined and efficient transition between monitoring activities, report issuance, and final audit resolution.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

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

SUBCHAPTER D. AGENCY MONITORING ACTIVITIES

TWC proposes the following amendments to Subchapter D:

§802.65. Agency Monitoring Reports and Resolution

Amended §802.65(a) stipulates that following monitoring activities, the TWC's monitoring department will issue a single monitoring report that summarizes the results of those activities. If no administrative findings or questioned costs are noted as a result of the audit, the monitoring report will be a management letter.

The amendment clarifies that only Boards, AEL grant recipients, and TWC grantees or contractors will be issued the monitoring report.

With regard to Boards, the monitoring report will be provided to the Board's chair and executive director. The monitoring report will also be provided to the designated representatives of the federal oversight agencies responsible for the programs reviewed by the TWC's monitoring staff to ensure compliance with any and all federal reporting requirements. The monitoring report will also be provided to the three-member Commission and TWC executive staff.

Amended §802.65(b) designates the initial resolution contact as the initial resolution notification. The amendment clarifies that only Boards, AEL grant recipients, and TWC grantees or contractors will be issued the notification. The amendment also stipulates that the recipient of the notification has 45 calendar days from the date the notification was mailed in which to respond.

Amended §802.65(b)(1)(B) clarifies that the TWC's audit resolution department will continue to coordinate with the monitored entity in the event that findings are not resolved and remain open until the following year's audit.

New §802.65(b)(3)(A) clarifies that the TWC may impose corrective actions under Chapter 802, Subchapter G, at any time during the resolution process. It is the intent of this amendment to stipulate that the TWC is not precluded from imposing corrective action allowed under Subchapter G, regardless of the status of TWC monitoring and resolution activities or reports thereto.

Amended §802.65(c) clarifies that only Boards, AEL grant recipients, and TWC grantees or contractors will be issued an initial determination.

Finally, amended §802.65(d) clarifies that only Boards, AEL grant recipients, and TWC grantees or contractors will be issued a final determination.

PART III. IMPACT STATEMENTS

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

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

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

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

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

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

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

Economic Impact Statement and Regulatory Flexibility Analysis

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

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

Paul Carmona, Director, Regulatory Integrity Division, has determined that for each year of the first five years that the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be an assurance that the TWC maintains a robust monitoring function, validating accountability and appropriate contractor use of over \$850 million in Federal and state funds administered by TWC for workforce development activities and subsidized child care services.

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

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, TWC sought the involvement of Texas' 28 Boards. TWC provided the concept paper regarding these rule amendments to the Boards for consideration and review on May 25, 2017. TWC also conducted a conference call with Board executive directors and Board staff on May 26, 2017, to discuss the concept paper. During the rulemaking process, TWC considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

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

The rules are proposed under Texas Labor Code §301.0015, which provides the TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules affect Texas Labor Code, Title 4.

Chapter 802. INTEGRITY OF THE WORKFORCE SYSTEM

SUBCHAPTER D. AGENCY MONITORING ACTIVITIES

§802.65. Agency Monitoring Reports and Resolution.

(a) Monitoring Report. The Agency's monitoring department shall issue a monitoring report summarizing the results of monitoring activities. The report shall include the observations, findings, questioned costs identified, and recommendations of the monitoring team to the Board, AEL grant recipient, or Agency grantees or contractors. If there are no administrative findings or questioned costs identified as a result of the monitoring review, a management letter will be issued. A monitoring report or management letter issued to a Board will be provided to the following:

- (1) Board chair
- (2) Board executive director
- (3) Designated representatives of the US Department of Health and Human Services
- (4) Designated representatives of the US Department of Labor
- (5) Texas Workforce Commissioners
- (6) Agency executive staff

~~(a) Monitoring Reports. The Agency's monitoring department shall issue the following monitoring reports summarizing the results of monitoring activities. The reports may include the observations, findings, and recommendations of the monitoring team and Board, workforce service provider, AEL grant recipient, AEL service provider, or Agency grantee responses to the observations, findings, and recommendations.~~

- ~~(1) Management Letter. If there are no findings (i.e., administrative findings and/or questioned costs), a management letter is issued.~~
- ~~(2) Draft Monitoring Report. If there are findings, a draft monitoring report is issued, which sets forth a specified period in which to respond.~~
- ~~(3) Final Monitoring Report. A final monitoring report is issued, which may include responses to the findings and recommendations.~~

(b) Initial Resolution Notification. Based on the ~~final~~ monitoring report, the Agency's audit resolution department shall issue an initial resolution notification, which notifies a Board, ~~workforce service provider, AEL grant recipient, AEL service provider,~~ or Agency grantee or contractor of administrative findings and questioned costs. The recipient of an initial resolution notification shall have 45 calendar days from the date the notification is mailed to respond. ~~and a specific time period for response.~~

(1) Administrative Findings.

(A) If the administrative findings set forth in the initial resolution [notification](#) are resolved, a closure letter is issued.

(B) If the administrative findings set forth in the initial resolution [notification](#) are not resolved, the findings remain open [and the Agency's audit resolution department continues to coordinate with the entity](#) until the following year's audit to ensure follow-up.

(2) Questioned Costs.

(A) If the questioned costs set forth in the initial resolution [notification](#) are resolved, a closure letter is issued.

~~(B)~~ If the questioned costs set forth in the initial resolution [notification](#) are not resolved, an initial determination is issued.

[\(3\) Corrective Actions. The Agency may also impose corrective actions under Subchapter G of this chapter at any time during the resolution process.](#)

(c) Initial Determination. The Agency's audit resolution department shall issue an initial determination notifying a Board, ~~workforce service provider~~, AEL grant recipient, ~~AEL service provider~~, or Agency grantee [or contractor](#) of the following:

(1) The unresolved questioned costs; and

(2) The 60-day period, from issuance of the initial determination, to submit a response, including providing evidence or documentation of the appropriate actions taken.

(d) Final Determination. If the questioned costs remain unresolved at the end of the 60-day period, the Agency's audit resolution department shall issue a final determination to notify a Board, ~~workforce service provider~~, AEL grant recipient, ~~AEL service provider~~, or Agency grantee [or contractor](#) of allowed or disallowed costs and to establish debts.

(e) If the administrative findings or questioned costs remain unresolved, the Agency's Regulatory Integrity Division may request a sanction, as set forth in §802.125 of this chapter (relating to Sanction Determination).

(f) Appeal Process

(1) Only final determinations regarding questioned costs issued by the Agency may be appealed, pursuant to §802.142 of this chapter (relating to Appeal).

- (2) Failure by a Board, workforce service provider, AEL grant recipient, AEL service provider, or Agency grantee to timely request a hearing waives the right to a hearing. The final determination shall constitute final Agency action and is not subject to further review.
- (3) If an appeal is requested and approved, a hearing officer is designated and the collection of debt is pending until final decision of the hearing.