

1 **CHAPTER 800. GENERAL ADMINISTRATION**

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3 **ADOPTED RULES TO BE PUBLISHED IN THE *TEXAS REGISTER*. THIS**  
4 **DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT TO**  
5 **FORMATTING CHANGES AS REQUIRED BY THE OFFICE OF THE SECRETARY**  
6 **OF STATE.**

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8 **ON OCTOBER 18, 2022, THE TEXAS WORKFORCE COMMISSION ADOPTED THE**  
9 **RULES BELOW WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.**

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11 Publication Date of the Adoption in the *Texas Register*: **November 18, 2022**

12 The Rules are Effective: **November 24, 2022**

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

16  
17 Subchapter B. Allocations, §§800.52, 800.71, 800.78, and 800.80

18  
19 The amendments are adopted *without changes* to the proposed text as published in the July 22,  
20 2022, issue of the *Texas Register* (47 TexReg 4282), and, therefore, the adopted rule text will not  
21 be published.

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

24 The purpose of the adopted amendments to Chapter 800 is to provide TWC's three-member  
25 Commission (Commission) flexibility when deobligating Adult Education and Literacy (AEL)  
26 statewide funds and considering an AEL grant recipient's performance when reallocating  
27 deobligated funds.

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

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

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33 **SUBCHAPTER B. ALLOCATIONS**

34 TWC adopts the following amendments to Subchapter B:

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36 **§800.52. Definitions.**

37 Section 800.52(5), the definition for "Deobligation" is amended to add §800.78 and §800.79 to  
38 the rule reference.

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40 **§800.71. General Deobligation and Reallocation Provisions**

41 Section 800.71(b) is amended to add §§800.78 - 800.80 to the rule reference.

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43 **§800.78. Midyear Deobligation of AEL Funds**

44 Section 800.78 is amended to rename the section "Deobligation of AEL Funds."  
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1 Section 800.78(a) is amended to update the reference to §800.78(d). Section 800.78(d) is deleted  
2 and the reference is updated to §800.80(a), which contains similar language to the language that  
3 was deleted.

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5 Section 800.78(a)(1) is amended to revise the time in which TWC may review expenditures for  
6 deobligation from months four to seven, to any month after month four.

7  
8 Section 800.78(d), which provides that amounts deobligated from an AEL grant recipient must  
9 be made available as a first priority to another grant recipient providing AEL services in the  
10 same workforce area, is deleted. The subsequent subsection is relettered accordingly.

### 11 **§800.80. Reallocation of AEL Funds**

12 Section 800.80 is amended to modify the criteria a grant recipient must meet in order to receive  
13 deobligated funds and revise language related to the reallocation of funds.

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15  
16 New §800.80(a)(7) is added to require a grant recipient to be meeting performance for the  
17 program year to receive deobligated funds.

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19 Section 800.80(b) is amended to clarify that the Commission must approve any plan to reallocate  
20 deobligated funds. Section 800.80(b) is also amended to add that the Commission may make  
21 those funds available as a first priority to other grant recipients within the same workforce area  
22 meeting the criteria in §800.80(a). Existing language provides that the Commission must approve  
23 an acceptable plan to reallocate funds to a grant recipient within the workforce area; and the new  
24 language provides that grant recipients outside the workforce area may be considered by the  
25 Commission, provided that requirements in §800.80(a) are met. Section 800.80(b) is also  
26 amended to add that if AEL grant recipients outside the workforce area are not able to meet the  
27 criteria in §800.80(a), then TWC staff will present an alternate plan for the Commission's  
28 consideration.

29  
30 TWC hereby certifies that the adoption has been reviewed by legal counsel and found to be  
31 within TWC's legal authority to adopt.

### 32 **PART III. PUBLIC COMMENTS**

33 The public comment period closed on August 22, 2022. No comments were received.

### 34 **PART IV. STATUTORY AUTHORITY**

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

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40 The adopted rules implement the requirements set out in Workforce Innovation and Opportunity  
41 Act Title II and Texas Labor Code, Chapter 315.



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- (7) Hold Harmless/Stop Gain--A procedure that assures that a relative proportion of an allocation to a workforce area is not below 90 percent of the corresponding proportion for the past two years, or that the current year proportion is not above 125 percent of the prior two-year relative proportion.
  - (8) Monthly expenditure report--A written or electronically submitted report by a Board or an AEL grant recipient that contains information regarding services for each category of funding allocated by the Commission, and in which the Board or an AEL grant recipient lists expenditures and obligations by category of funding.
  - (9) Obligation--A debt established by a legally binding contract, letter of agreement, sub-grant award, or purchase order, which has been executed prior to the end of a contract period, for goods and services provided by the end of the contract period, and which will be liquidated 60 calendar days after the end of a contract period, unless such definition is superseded by federal requirements.
  - (10) Relative proportion of the program year--The corresponding part of the program year that is used to compare expenditures. That is, if 50 percent of the program year has transpired, then the relative proportion of the program year is 50 percent.
  - (11) WIA Formula Allocated Funds--Funds allocated by formula to workforce areas for each of the following separate categories of funding: WIA Adult, Dislocated Worker, and Youth.

29 **§800.71. General Deobligation and Reallocation Provisions.**

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- (a) Purpose. The purpose of this rule is to promote effective service delivery, financial planning, and management to ensure full utilization of funding, and to reallocate funds to populations in need.
  - (b) Scope. Sections 800.71 - 800.80 of this subchapter shall apply to funds provided to workforce areas under a contract between the Board or an AEL grant recipient and the Commission for the following categories of funding:
    - (1) Adult Education and Literacy
    - (2) Child Care
    - (3) Choices
    - (4) Employment Service

- 1 (5) SNAP E&T
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- 3 (6) Project RIO
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- 5 (7) WIA Alternative Funding for Statewide Activities
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- 7 (8) WIA Alternative Funding for One-Stop Enhancements
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9 **§800.78. Deobligation of AEL Funds.**

- 10
- 11 (a) The Commission may deobligate funds from an AEL grant recipient during the
- 12 program year if an AEL grant recipient is not meeting the expenditure thresholds set
- 13 forth in subsection (b) of this section, provided, however, that the requirements of
- 14 §800.80(a) of this subchapter are satisfied.
- 15
- 16 (1) AEL grant recipients that fail to meet the expenditure thresholds set forth in
- 17 subsection (b) of this section at the end of month four(October), or any month
- 18 thereafter, will be reviewed to determine the causes for the under expenditure
- 19 of funds, except as set forth in subsection (d) of this section.
- 20
- 21 (2) The Commission shall not deobligate more than the difference between an
- 22 AEL grant recipient's actual expenditures and the amount corresponding to the
- 23 relative proportion of the program year.
- 24
- 25 (3) The Commission shall not deobligate funds from an AEL grant recipient that
- 26 failed to meet the expenditure thresholds set forth in subsection (b) of this
- 27 section, if within 60 days prior to the potential deobligation period the
- 28 Commission executes a contract amendment for a supplemental allocation or
- 29 reallocation of funds in the same program funding category.
- 30
- 31 (b) The Commission may deobligate funds from an AEL grant recipient midyear, as set
- 32 forth in subsection (a) of this section, if an AEL grant recipient fails to achieve the
- 33 expenditure of an amount corresponding to 90 percent or more of the relative
- 34 proportion of the program year.
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- 36 (c) An AEL grant recipient subject to deobligation for failure to meet the requirements
- 37 set forth in this section shall, upon request by the Commission, submit a written
- 38 justification. For an AEL consortium, a copy must be provided to all AEL
- 39 consortium members. The written justification shall provide sufficient detail
- 40 regarding the actions an AEL grant recipient will take to address its deficiencies,
- 41 including:
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- 43 (1) expansion of services proportionate to the available resources;
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- 45 (2) projected service levels and related performance;
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- 1 (3) reporting outstanding obligations; and
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- 3 (4) any other factors an AEL grant recipient would like the Commission to
- 4 consider.
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- 6 (d) To the extent this section may be found not to comply with federal requirements, or
- 7 should any related federal waivers expire, the Commission will be subject to federal
- 8 requirements in effect, as applicable.
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10 **§800.80. Reallocation of AEL Funds.**

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- 12 (a) For an AEL grant recipient to be eligible to receive deobligated AEL funds, the
- 13 Commission may consider whether the AEL grant recipient:
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- 15 (1) has met targeted expenditure levels as required by §800.78(a) and (b) of this
- 16 subchapter, as applicable, for that period;
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- 18 (2) has not expended or obligated more than 100 percent of the workforce area's
- 19 allocation for the category of funding;
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- 21 (3) has demonstrated that expenditures conform to cost category limits for
- 22 funding;
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- 24 (4) has demonstrated the need for and ability to use additional funds;
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- 26 (5) is current on expenditure reporting;
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- 28 (6) is current with all single audit requirements;
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- 30 (7) is meeting performance for the program year; and
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- 32 (8) is not under sanction.
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- 34 (b) The Commission must approve any plan to reallocate funds deobligated or
- 35 voluntarily deobligated from AEL grant recipients. The Commission may make such
- 36 funds available as a first priority to any other AEL grant recipients providing AEL
- 37 services within the same workforce area meeting the requirements of subsection (a)
- 38 of this section, upon receipt and approval by the Commission of an acceptable plan.
- 39 Following the determination that any such plan has not been determined to be
- 40 acceptable, the Commission may consider AEL grant recipients outside the
- 41 workforce area satisfying the requirements of subsection (a) of this section, upon
- 42 receipt and approval by the Commission of an acceptable plan. In the event AEL
- 43 grant recipients outside the workforce area are not able to meet the requirements of
- 44 subsection (a) of this section, Agency staff will present an alternate plan for
- 45 Commission consideration.