

Section 809.20 Leveraging Local Resources and Repeal of Section 809.20 Local Donations

The following rule(s) will be effective August 3, 2000.

The Texas Workforce Commission (Commission) adopts new §809.20 relating to Leveraging Local Resources, and the repeal of §809.20 relating to Local Donations, with changes to the text as published in the May 5, 2000, issue of the *Texas Register* (25 TexReg 3938).

Section 809.20 sets forth a local workforce development board's (Board) responsibility to leverage local resources by securing local matching funds and obtaining certifications from public entities that reflect expenditures that are consistent with the purposes of the Child Care and Development Fund.

The purpose of the proposed rule is to clarify the role of the Boards in securing local matching funds to improve the affordability, accessibility, and quality of child care. The Commission encourages the Boards to aggressively solicit and manage the securing of local funds to the fullest extent possible to ensure that local public and private funds are leveraged to meet the child care needs of the residents of Texas. The proposed rule clarifies that the Boards are able to fully manage pledges of funds, transfers, and certifications. The clarification is intended to enable Boards to avail themselves of matching federal funds available to the local workforce development area (workforce area) if the Boards secure local funds, and to enable Boards to realize the long-term benefits to the future workforce through any additional local funds invested today in affordable, accessible, quality child care. The Commission's intent is not to over-commit federal matching funds available through the Commission, but to encourage the Boards to secure additional local matching funds beyond the minimum required to access federal matching funds, and to multiply the benefits of each investment in child care for low income working families, local employers, and others in the workforce area. By supporting Boards that forge public-private partnerships to invest in child care, the Commission intends to support the goals of state and federal child care statutes and regulations.

Goals: Child care services are provided to low-income families to create and promote long-term self-sufficiency by enabling parents to work or attend educational or training activities. Such services should offer child care that promotes the physical, social, emotional, and intellectual development and safety of children. Recognizing that parents best understand the needs of their children, these services empower parents to make informed choices regarding child care that best suits the family's needs. The Commission also advocates improvements in the availability, affordability, and quality of child care while supporting health, safety, and regulatory standards for

child care providers. The goals are to coordinate workforce services, to leverage private and public funds at the local level, and to fully integrate child care for low-income families with the network of workforce training and services under the administration of the Boards.

The Child Care and Development rule contained in 40 TAC §809.20 applies to Boards securing local matching funds to access available federal matching funds and the additional federal matching funds that may subsequently be accessed by the Boards. For example, a Board shall ensure that the local matching funds and the corresponding federal matching funds are spent on authorized child care activities as specified in the Board's integrated strategic and operational plan, including child care services for eligible families and quality improvement activities. Similarly, a Board is charged with ensuring that the resulting federal matching funds are expended only up to the amount that corresponds to the donations, transfers, and certifications that are completed within the program year. A Board shall also report and monitor the activities to secure and leverage funds and corresponding expenditures consistent with the Board's Funds Utilization and Service Level Plan and reporting requirements described in 40 TAC §§800.82 and 800.83.

Comments were received from the following Boards: Alamo, Deep East, Panhandle, and South Plains. Some of the commenters supported the rule, and others suggested changes and requested clarification to the language contained in the proposed rule. The summary of comments and the responses are set forth as follows.

Comment: One commenter stated that in §809.20(a)(1), which refers to Boards raising local public and private funds, and in §809.20(b)(1), which refers to Boards managing the fund-raising of local resources, the language was confusing and seemingly contradictory with the Texas Workforce Commission's financial manual, which prohibits fund-raising. The commenter wanted to know how the Board is to fund-raise or manage fund-raising without violating the Office of Management and Budget's (OMB) prohibition against fund-raising.

Response: The Commission agrees that the OMB Circulars and the Texas Workforce Commission's financial manual prohibit "fund-raising," and clarifies that the securing of local matching funds is not a prohibited activity that would fall under the definition of "fund-raising." Specifically, the federal child care statute at 42 U.S.C.A. §618(a)(2)(C) provides for payment to eligible States of an amount based on the Federal medical assistance percentage (FMAP) based on the State's expenditures for child care. The federal regulations at 45 CFR §98.53 provide that "an expenditure in the State may be used to secure matching funds if it consists of (1) public funds that are transferred from another public agency to the Lead Agency; (2) public funds that are certified by the contributing public agency as representing expenditures eligible

for Federal match; or (3) donated funds from private sources." Collecting donations of private funds to secure local matching funds is also recognized in 45 CFR §98.53(f), which provides that "Donated funds need not be transferred to or under the administrative control of the Lead Agency in order to qualify as an expenditure eligible to receive Federal matching funds. They may be given to the entity designated by the State to receive donated funds pursuant to §98.16(c)(2)." The provision referenced by the commenter is a prohibition against using federal funds to pay the costs of "organized fund-raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions." Fund-raising, as prohibited, is typically associated with political activity or other activities beyond securing local matching funds as authorized under the Child Care and Development Fund statute and regulations. The broad prohibition against using federal funds to pay the costs of "organized fund-raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions" does not apply to the incidental costs required to secure local matching funds.

The Commission agrees, however, to clarify the language contained in the rule. The term "fund-raising" is being replaced with "securing local matching funds," which is consistent with federal statute and regulations and is not a prohibited activity. The Commission also notes that Boards may use state funds, program income such as parent fees, and donated funds that are used for local match to secure matching funds.

Comment: One commenter stated that the requirement to secure local matching funds is difficult for small Boards and that the requirement for Boards to compete for monies from the State has become a staffing issue for the Boards.

Response: The Commission recognizes that Boards have differing levels of local resources. However, the Commission also recognizes the leadership role of Board members within their individual communities to identify needs and resources to address those needs, and secure local resources to enhance funds available within the workforce area.

Comment: One commenter raised the following two questions about the incentive awards: "what is the amount of the award?" and "what can the incentive funds be used for?"

Response: At the present time child care is included in the incentive awards process because the general incentive awards are based in part on performance related to child care measures. Specific amounts and uses of any such awards are determined by the general incentive rules (40 TAC Chapter 800, Subchapter D Incentive Award Rules).

Comment: One commenter suggested that the language of the rule may be unclear regarding "in an amount equal to."

Response: The Commission agrees and revises the language accordingly to make clear that Boards may secure more local funds than merely those required to obtain federal matching funds.

Comment: One commenter agreed with the overall intent of the rule, but was concerned with §809.20(b)(2). The commenter felt that the wording of that section suggests that a Board should raise more funds than it will be allowed to submit for federal match, and that some donors do not want to donate unless they can get a "return on their investment." The commenter stated that not receiving federal matching funds severely hinders a Board's efforts to secure local donations. The commenter suggested that the wording be changed to read: "In order for a Board to receive federal matching funds, a Board must raise local funds in the amount necessary to draw down the federal match dollars." A second commenter stated that the language of this paragraph appears to require Boards to raise more local matching funds than are actually needed for the federal match, and that this would seriously damage credibility with local partners. The second commenter stated that the language should be clarified if the intent is actually to raise local funds sufficient to match available federal funds.

Response: The Commission believes it is important to encourage the Boards to obtain more local matching funds than that required to draw down each Board's allocated amount of federal funds. One reason for securing more local matching funds than merely the amount needed to draw down the corresponding federal matching funds is that unforeseen circumstances beyond the Board's control may arise that make the pledged donation, transfer, or certificate difficult or not feasible to complete by the anticipated completion date. Another reason for securing more local matching funds than merely the amount needed to draw down the corresponding federal matching funds is that those unmatched funds add to the amount available in the workforce area for child care services and demonstrate the Board's capability to utilize reallocated additional federal matching funds should they become available.

The repeal is adopted under Texas Labor Code §§301.061 and 302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

§809.20. Local Donations.

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§809.20. Leveraging Local Resources

(a) **Leveraging Local Funds.** The Commission encourages Boards to secure as much local public and private funds for match as possible in order to leverage all available resources to address child care needs in the community.

(1) A Board may secure local funds for match in the form of one or more of the methods in order to leverage (match) against federal funds available through the Commission:

(A) donations of funds from a private entity;

(B) transfers of funds from a public entity; or

(C) certifications of expenditures by a public entity that represents expenditures eligible for federal match.

(2) A Board's performance in securing and leveraging local funds for match may make the Board eligible for incentive awards.

(b) **Securing Local Funds to Access Federal Matching Funds from the Commission.**

(1) A Board shall manage the securing of funds, including the selection of pledged and completed donations, transfers, and certifications that are used by the Board to receive federal matching funds through the Commission.

(2) A Board shall ensure that federal matching funds are maximized by securing local funds for match in an amount that may exceed the amount required to match available federal funds.

(c) **Documenting Pledged Donations, Transfers and Certifications.** A Board shall maintain written documentation of pledged donations, transfers and certifications that contain, at a minimum, the following:

(1) the signature of the representative of the Board;

(2) the signature of the potential contributor;

(3) the potential contributor's commitment to fulfill the pledge of the donation, transfer or certification by paying or certifying the funds to the Commission for use in a specific workforce area on a set payment or certification schedule;

(4) the Board's commitment to use the donated or transferred funds as requested by the contributor, as long as it is consistent with federal regulations at 45 CFR §98.53; and

(5) sufficient information to determine that the funds will be used in a manner consistent with 45 CFR §98.53.

(d) Submitting Pledged Donations, Transfers and Certifications for Acceptance by the Commission. A Board shall submit pledged donations, transfers, and certifications to the Commission for acceptance.

(e) Completing Donations, Transfers and Certifications.

(1) A Board shall ensure that donations of cash and transfers of funds are paid to the Commission and that certifications are also submitted to the Commission.

(2) Donations and transfers are considered complete to the extent that the funds have been paid to the Commission.

(3) Certifications are considered complete to the extent that a signed written instrument is delivered to the Commission that reflects that the public entity has expended a specific amount of funds on eligible child care services.

(f) Reporting. A Board shall report information relating to pledged and completed donations, transfers and certifications in the monthly expenditure and service level reports as referenced in §800.83 of this title relating to Funds Utilization and Service Level Plan and Reports.

(g) Monitoring. A Board shall monitor the funds secured for match and the expenditure of any resulting funds to ensure that expenditures of unmatched federal funds available through the Commission do not exceed an amount that corresponds to the donations, transfers, and certifications that are completed by the end of the program year.