

TEXAS WORKFORCE COMMISSION LETTER

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Date:	May 14, 2009
Keyword:	Recovery Act; WIA
Effective:	Immediately

To: Local Workforce Development Board Executive Directors
Commission Executive Offices
Integrated Service Area Managers
Laurence M. Jones for

From: Laurence M. Jones, Director, Workforce Development Division

Subject: **Workforce Investment Act: American Recovery and Reinvestment Act of 2009 Implementation Guide**

PURPOSE:

To provide Local Workforce Development Boards (Boards) with information and guidance on:

- administering Workforce Investment Act (WIA) funds under the American Recovery and Reinvestment Act (ARRA) of 2009; and
- the WIA ARRA Implementation Guide (WIA ARRA guide), which sets forth the parameters for use of the funds.

BACKGROUND:

ARRA, enacted in February 2009, brings an influx of available funds for WIA activities that the state and Boards can use to help put Texans back to work.

PROCEDURES:

Boards must use the WIA ARRA guide, available on the Texas Workforce Commission's (Commission) Web site at <http://www.twc.state.tx.us/svcs/funds/arra.html>. The WIA ARRA guide will be updated online, as needed.

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Boards must be aware of the following information, which highlights important provisions on the use of ARRA funds.

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ARRA Expenditure Thresholds

The U.S. Department of Labor Employment and Training Administration (DOLETA) intends that a majority of the ARRA funds be used in the first year of availability. Therefore, commensurate with this expectation, Boards must be aware of the following expenditure thresholds:

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ARRA Youth Funds

- 70 percent expended by September 30, 2009
- 80 percent expended within the first program year of availability (by January 31, 2010)
- 100 percent expended by June 30, 2010

ARRA Adult and Dislocated Worker Funds

- 80 percent expended within the first program year of availability (by June 30, 2010)
- 100 percent expended by December 31, 2010

Deobligation/Reallocation of ARRA Funds

Boards must be aware that:

- ARRA funds are subject to deobligation effective July 1, 2010; and
- ongoing deobligation/reallocation reviews to monitor expenditures will be conducted from July 1, 2010, through the remainder of the contract period.

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Minimum Amount of ARRA Youth Funds for Summer Employment

Boards must ensure that 60 percent of ARRA youth program funds are expended on summer employment activities.

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Boards must ensure that the costs for summer employment are reported in the Cash Draw Expenditure Reporting (CDER) system under the “Summer Employment supplemental” cost category. Costs for summer employment include:

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- expenditures for activities that occur during the defined period of operation for the summer employment component (through September 30, 2009);
- the work experience wages and fringe benefits paid to the summer employment participants; and
- other activities provided in conjunction with work experience, such as academic basic skills enrichment activities, work readiness activities, and on-the-job training (OJT).

Boards must be aware that summer employment costs do not include Texas Workforce Center staff time, such as time spent developing an Individual Service Strategy and coordinating and overseeing summer employment placement.

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Boards must be aware that:

- the Commission has suspended the state’s requirement that 60 percent of WIA youth funds be expended on out-of-school youth; and
- ARRA youth funds will be subject to the federal requirement that 30 percent of funds be expended on out-of-school youth.

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Youth Summer Employment

Boards must be aware that DOL expects all Texas Workforce Center staff assisting with summer employment programs to be trained in implementing certain aspects of summer employment, including:

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- wage and hour provisions;
- child labor laws; and
- worksite supervision.

For training on child labor laws, contact the Commission's Labor Law Section at (800) 832-9243 or (512) 475-2670.

For information and resources on safety and child labor laws, see <http://www.youthrules.dol.gov/about.htm> and <http://www.osha.gov/teens>.

For information related to Texas requirements, see <http://www.twc.state.tx.us/ui/lablaw/lablaw.html>.

Boards must ensure that youth participating in summer employment receive an orientation that includes the following:

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- Participation requirements;
- Workplace safety information;
- Time sheet tracking and payroll verification procedures;
- Supervision and case management communication expectations, including the frequency of worksite monitoring (i.e., the frequency of Texas Workforce Center staff visits to the worksite); and
- Additional services available through the Texas workforce system.

It is recommended that Boards establish summer employment opportunities that are linked, to the extent possible, with education and training, and credential attainment.

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DOLETA guidance provides Boards the flexibility to determine whether it is appropriate to link academic learning directly with summer employment for each youth served with ARRA funds only during the summer months. DOLETA observes that in some situations, Boards may want to complement work experience with classroom-based learning to provide youth with assistance in developing and refining attitudes, values, and work habits that will contribute to their success in the workplace. DOL also notes that classroom training coupled with work experience is critical, particularly for younger youth or older youth with educational deficiencies. For these youth, a combination of work-based and classroom-based learning activities may be warranted to provide basic skills instruction, career exploration, and life skills training.

It also is recommended that Boards examine opportunities to establish summer employment in the health care field. These summer employment opportunities can be linked with ongoing training and education, beyond the summer months, leading to credential attainment.

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Boards may establish a combination of public sector, private sector, and nonprofit summer employment opportunities.

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Boards must provide extensive public announcements on the availability of these summer employment opportunities, and adopt selection criteria to ensure that one employer is not favored at the expense of another employer.

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Summer Employment/Work Experience Worksites

Boards must ensure that:

- arrangements do not unfavorably impact current employees and do not impair existing contracts for services or collective bargaining agreements;
- arrangements do not impact the profit margin of a for-profit company; and
- opportunities are *not* in any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

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Boards also must ensure that each work experience worksite complies with the following:

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- Health and Safety regulations;
- Fair Labor Standards Act; and
- All other applicable federal and state employment laws, including wage and hour provisions and child labor laws.

Minimum Amount of ARRA Adult and Dislocated Worker Funds for Training

Boards must ensure that 67 percent of ARRA adult and dislocated worker program funds are expended on costs for participants to engage in training, including necessary support services and needs-related payments (NRPs).

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Training includes the following:

- Occupational/vocational training
- OJT
- Internships
- Entrepreneurial training
- Private sector training programs
- Customized training
- Apprenticeship
- Direct contracts with institutions of higher education for training and curriculum development

Boards must be aware that training costs also include costs associated with the following educational activities when they are provided in conjunction with a training activity:

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- Adult Basic Education/Literacy
- English as a Second Language

Boards must ensure that:

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- costs for training, and any educational activities provided in conjunction with a training activity, are reported in CDER under the “Direct Program – Training” cost category; and
- any educational activities provided as a stand-alone service and not in conjunction with training are reported in CDER under the “Direct Program – Core/Intensive” cost category.

Note: “In conjunction with training” means that the allowable educational activity is either a direct, integrated component of the training or is provided parallel with the training. The two activities must start within 30 days of each other and the educational activity must not end more than 30 days after the training ends.

Boards must record both the training and the educational services separately in The Workforce Information System of Texas (TWIST) even if the allowable educational activity is directly integrated with the training. This makes it possible to report both the training and the allowable educational activity as required by DOL.

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Boards must be aware that training costs do not include Texas Workforce Center staff time, such as time spent developing an Individual Employment Plan, and coordinating training services for a customer. Boards must ensure that Texas Workforce Center staff time is reported in CDER in the “Direct Program – Core/Intensive” cost category.

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Needs-Related Payments

Boards must be aware that NRPs are an allowable expense for adults, dislocated workers, and out-of-school youth in training. NRPs provide financial assistance to participants to enable them to participate in training. Boards must have an established policy regarding NRPs. [As required by Commission rules §809.13(16) and §801.51(f) and as detailed in WD Letter 10-07, Board members must take such actions in an open meeting.]

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Boards must be aware of the following NRPs:

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- For a participant who was eligible for unemployment insurance (UI) benefits as a result of a qualifying dislocation, NRPs must not exceed the applicable weekly level of the UI benefit.
- For a participant who did not qualify for UI benefits as a result of a qualifying layoff, NRPs must not exceed the U.S. Department of Health and Human

Services' poverty income guidelines for the participant's family size (<http://aspe.hhs.gov/poverty/index.shtml#latest>).

- For an out-of-school youth, Boards must establish the maximum NRP amount.
- For adults, Boards must establish the maximum NRP amount.

It is recommended that Boards consider the maximum limits established under WIA for dislocated workers to ensure consistency among participants.

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Local Activity Funds Designations

Boards must ensure that all ARRA local activity funds designations are requested as set forth in WD Letter 48-07, Change 2

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<http://www.twc.state.tx.us/boards/wdletters/letters/48-07c2.pdf>.

Contracts with Institutions of Higher Education and Other Training Providers

In accordance with DOLETA Training and Employment Guidance Letter 14-08, issued March 18, 2009 (<http://wdr.doleta.gov/directives/attach/TEGL/TEGL14-08.pdf>), Boards may enter into direct contracts with:

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- institutions of higher education (including all institutions as defined at Texas Education Code §61.003); and
- other eligible training providers

Boards must ensure that any contracts:

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- are intended to help increase enrollments and capacity;
- do not limit customer choice; and
- facilitate the training of multiple individuals in high-demand occupations.

Boards must ensure that curriculum development activities directly contracted with institutions of higher education, including community colleges or other eligible training providers:

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- are developed in the context of contracting for training services;
- prioritize the adaptation of existing curricula or the creation of new curricula that will result in a short-term increase in training capacity over long-term curriculum development activities;
- focus on occupations, to the greatest extent practicable, in emerging sectors or complement occupations needed in other ARRA-funded projects; and
- enhance the capacity of the institutions to ensure quality training within limited time frames.

Boards must adhere to all requirements set forth in the Commission's Financial Manual for Grants and Contracts (FMGC) when using any funds for capacity-building activities (http://www.twc.state.tx.us/business/fmgc/fmgc_toc.html). For example, FMGC Chapter 8 includes, but is not limited to, requirements related to reasonableness criteria. Regarding reasonableness criteria, consideration must be given to the extent to which a purchase is necessary to ensure quality training to workforce customers within limited time frames. In addition, FMGC Chapter 11

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includes requirements such as conditions pertaining to the acquisition, management, and disposal of equipment.

INQUIRIES:

Direct inquiries regarding this WD Letter to wfpolicy.clarifications@twc.state.tx.us.

RESCISSIONS:

None

REFERENCE:

- American Recovery and Reinvestment Act of 2009 (Public Law 111-5)
- U.S. Department of Labor Employment and Training Administration, Training and Employment Guidance Letter 14-08, issued March 18, 2009, and entitled “Guidance for Implementation of the Workforce Investment Act and Wagner-Peyser Act Funding in the American Recovery and Reinvestment Act of 2009 and State Planning Requirements for Program Year 2009”
- U.S. Department of Labor Employment and Training Administration, Training and Employment Guidance Letter 14-08, Change 1, issued April 15, 2009, and entitled “Guidance for Implementation of the Workforce Investment Act and Wagner-Peyser Act Funding in the American Recovery and Reinvestment Act of 2009 and State Planning Requirements for Program Year 2009, Change 1”
- Texas Workforce Commission’s Financial Manual for Grants and Contracts
- WD Letter 10-07, issued February 2, 2007, and entitled “Adoption of Local Workforce Development Board Policies in Open Meetings”
- WD Letter 48-07, Change 2, issued December 23, 2008, and entitled “New Contract Action Request Form”

FLEXIBILITY RATINGS:

No Local Flexibility (NLF): This rating indicates that Boards must comply with the federal and state laws, rules, policies, and required procedures set forth in this WD Letter and have no local flexibility in determining whether and/or how to comply. All information with an NLF rating is indicated by “must” or “shall.”

Local Flexibility (LF): This rating indicates that Boards have local flexibility in determining whether and/or how to implement guidance or recommended practices set forth in this WD Letter. All information with an LF rating is indicated by “may” or “recommend.”