

TEXAS WORKFORCE COMMISSION LETTER

ID/No:	WD 13-10, Change 1
Date:	June 8, 2010
Keyword:	ES; Recovery Act; TWIST; UI; WorkInTexas.com
Effective:	Immediately

To: Local Workforce Development Board Executive Directors
Commission Executive Offices
Integrated Service Area Managers



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

Subject: **Texas Back-to-Work Initiative—Subsidized Employment—*Update***

PURPOSE:

To provide Local Workforce Development Boards (Boards) with information and guidance on the Texas Back-to-Work (TBTW) Initiative—operating as a statewide subsidized employment program, effective February 2, 2010—specifically:

- eligibility;
- program design;
- guidelines;
- The Workforce Information System of Texas (TWIST) instructions;
- WorkInTexas.com instructions; and
- funding and distribution.

This WD Letter provides Boards with updated information and guidance on the TBTW Initiative, specifically the following:

- **Prohibition of using after-the-fact hired lists to determine TBTW eligibility;**
- **Signing of worksite agreements by the hiring authority;**
- **Updated TWIST instructions; and**
- **Funding of TBTW wage subsidies through the Boards' XSE and BTW contracts.**

The attachments remain unchanged.

CHANGES TO WD LETTER 13-10:

New information in this WD Letter is indicated by:

- A strikethrough of the original language, which indicates that language has been deleted; and
- **Bold** typeface, which indicates new or clarifying language.

BACKGROUND:

Rider 31(c), Article VII, General Appropriations Act, 81st Texas Legislature, Regular Session (2009), directs the Texas Workforce Commission (Commission) as follows:

Out of amounts appropriated above in Strategy A.1.4, Employment and Community Services, the amounts of \$15,000,000 in General Revenue for Fiscal Years 2010 and 2011 (FY’ 10 and FY’ 11) are for public-private partnerships with employers to move Texans off of public benefits and into the workforce. This program would target first-time unemployment insurance claimants previously earning less than \$15/hour and reach up to 15,000 workers.

On February 2, 2010, the Commission approved—based on the availability of American Recovery and Reinvestment Act (ARRA) of 2009/Temporary Assistance for Needy Families (TANF) Emergency Contingency Fund (ECF) funds—that TBTW Initiative efforts focus exclusively on subsidized employment services in order to maximize the receipt of ARRA/TANF ECF funds.

Through ARRA/TANF ECF, states can be reimbursed up to 80 percent of increased TANF and state maintenance-of-effort spending in Federal Fiscal Year 2009 (FFY’09) and FFY’ 10 in multiple categories, including increased expenditures for subsidized employment. All expenditures related to operating a subsidized employment program, including the cost of overseeing the program and developing worksites, and costs associated with employer supervision, can be claimed when applying for ARRA/TANF ECF advances and reimbursements.

PROCEDURES:

Eligibility

Boards must be aware of the following:

- The Commission determines the eligibility of TBTW participants.
- Eligible individuals include:
 - first-time UI claimants with an active claim filing status—defined as a claimant who has filed an initial claim and received at least one benefit payment—on or after September 1, 2009, who earned less than \$15 an hour in their previous employment; and
 - unemployed individuals who have exhausted all UI benefits.
- The TBTW Initiative targets first-time UI claimants receiving regular state UI benefits, to the extent practical. These claimants are identified by a blue dollar sign icon in WorkInTexas.com.

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Program Design

The Commission has established a consistent statewide policy regarding the TBTW Initiative, effective February 2, 2010, that provides for:

- a standard wage subsidy of \$2,000 per participant to be paid statewide;
- wage subsidies to be calculated on a flat rate (rather than on an hourly basis); and

- Board discretion in establishing the method of employer payment.

Boards may choose from the following two wage subsidy employer earning scales:

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- a tiered schedule across four months, weighted more heavily in the early months (\$800 in month one, \$600 in month two, \$400 in month three, and \$200 in month four); or
- spread evenly across the four months (\$500 each month).

Boards may pay employers:

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- each month, according to the schedule chosen above; or
- once, at the completion of the subsidy period, as long as monthly expenditures are accrued according to the schedule chosen above.

In addition, Boards may honor existing employer agreements enacted based on previously approved Rider 31 TBTW plans. Employers and claimants participating prior to February 2, 2010, will be allowed to complete the previously approved activities. However, as of February 2, 2010, all new participation must adhere to the new statewide program design for the TBTW Initiative.

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Guidelines

Boards must be aware of the following:

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- TBTW participants are considered regular employees of the participating employer.
- Employment must be full-time—defined for the purposes of TBTW as paid employment for 30 hours or more per week—for the duration of the subsidy period.
- Subsidized employment is available only to private-sector employers.
- Participating employers must have a valid TWC tax account and must be in good standing with the Commission.
- If a staff leasing services company (staffing company) is used, there must be a tri-party agreement between the Board, the staffing company, and the employer. The employer must receive the subsidy, not the staffing company.
- Records must be maintained for reporting purposes.

Boards must establish:

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- reimbursement procedures;
- procedures for keeping records on hours, amount of subsidy, and reimbursement payments; and
- procedures for following up with employers and TBTW participants.

Boards may:

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- allow TBTW participants to self-market the program to prospective employers; and
- restrict participation for questionable employers.

Boards must ensure that claimants are advised of the following:

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- Under Texas Labor Code §207.047(a)(1) and (2), refusing either a staff referral to or an offer of suitable employment as described in §207.008 is reportable to the

Commission's UI Division and may subject the claimant to disqualification for UI benefits.

- Information related to this requirement is located in the Commission's *Unemployment Insurance Benefits and Work Search Information*, which claimants receive at the time of initial claim filing and is available on the Commission's Web site at <http://www.twc.state.tx.us/ui/bnfts/bi-99.pdf>.

Boards must ensure that Texas Workforce Center staff follows existing procedures when reporting potential suitable work issues to the Commission.

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Boards must be aware of the following:

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- **In the absence of an established, ongoing relationship with an employer that includes preliminary discussion of TBTW and active referrals to current job openings, using after-the-fact hired lists to determine TBTW eligibility is prohibited. The only exception is for employer agreements executed as a result of TBTW-eligible job seekers who self-referred using a Board-developed TBTW job seeker self-marketing certificate.**
- **It is crucial that the employer has prior knowledge of the job seeker's TBTW eligibility. The effectiveness of TBTW is predicated on the assumption that the employer understands the program and is given an incentive to hire a qualified claimant because of it.**
- **One goal of TBTW is to facilitate the creation of long-term relationships between Boards and employers, many of whom may not have been engaged with the Texas workforce system prior to TBTW. The only way to foster a viable, ongoing, and active relationship is for the Board to demonstrate its ability to meet the employer's staffing needs. TBTW is the starting place for that active relationship based on a Board's ability to refer TBTW-eligible job seekers to the employer—either through direct referrals or a Board-developed TBTW job seeker self-marketing certificate.**

Outreach

Boards must:

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- develop and implement an outreach plan and strategies to identify and recruit employers and eligible first-time UI claimants to participate in the TBTW Initiative; and
- announce the availability of the TBTW Initiative to employers and first-time UI claimants in the local workforce development area in such a manner as to ensure public awareness.

Boards may use the outreach materials developed by the Commission as part of its statewide outreach campaign to employers and claimants.

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Worksite Agreement

Boards must ensure that a worksite agreement is completed and signed by all applicable parties no later than ~~30~~ 45 days after the date of hire.

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Boards must be aware that if an employer has a designated agent sign a worksite agreement on its behalf, the hiring authority—i.e., the individual who interviews and hires the TBTW-eligible job seeker— also must sign the agreement. This ensures that the employer is fully informed of the TBTW arrangement and understands in advance that the job seeker is TBTW eligible.

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Boards may:

- use the *Texas Back-to-Work Initiative Worksite Agreement* (Attachments 1 and 2); or
- develop and execute their own worksite agreement with the understanding that, at a minimum, the conditions set forth in Attachment 1 are met.

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Boards must ensure that a locally developed worksite agreement states:

- the roles and responsibilities of the employer, the Board, and its contractors; and
- how the subsidy will be earned and when it will be paid.

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If a Board chooses to use a locally developed worksite agreement, the Board must provide the Commission with a copy of its intended worksite agreement.

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TBTW Participants

Boards must ensure that TBTW participants do not displace other employees. As set forth in 20 C.F.R. §667.270, a TBTW participant or activity must not:

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- displace (including a partial displacement, such as a reduction in the hours of non-overtime work, wages, or employment benefits) any currently employed worker as of the date of the participation; or
- impair existing contracts for services or collective bargaining agreements. When the program or activity would be inconsistent with a collective bargaining agreement, the appropriate labor organization and employer must provide written concurrence before the program or activity begins.

In addition, Boards must ensure that a TBTW participant is not employed in, or assigned to, a job if:

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- the employer has terminated any regular, unsubsidized employee or caused an involuntary reduction in its workforce with the intention of filling the vacancy with a TBTW participant; or
- the job is created in a promotional line that infringes in any way on the promotional opportunities of currently employed workers.

Performance Reviews

Boards must ensure that:

- Board and contractor staff are available to participate in periodic program performance reviews conducted by the Commission; and

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- employers and claimants are advised of the opportunity to participate in an evaluation conducted by the Commission, upon request.

TWIST

Boards must be aware of the following:

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- TWIST fund code *184–Texas Back to Work* is available to track TBTW participants who receive services through the TBTW Initiative.
- Effective February 2, 2010, the following service codes are inactive. Data must be entered retroactively for any participants engaged in the following activities on or before February 2, 2010:
 - *1–Occupational/Vocational Training*
 - *47–Unpaid Public Work Experience*
 - *48–Unpaid Non-profit Work Experience*
 - *49–Unpaid For-profit Work Experience*
 - *213–Employer Retention Bonus*
- Effective February 3, 2010, TWIST service code *42–Subsidized Employment* must be used for any participants engaged in TBTW activities.
- Under TWIST *Service Tracking*, the following must be completed:
 - All mandatory fields on the *Service Information* tab, upon entry and completion of the wage subsidy period
 - ~~All fields on the *Referral Detail* tab~~
 - On the *Optional Questions* tab, the **following** questions:
 - a. *Was this participant hired by or through a staffing company?*
 - b. *Any child living in the home 24 years of age or younger?*

WorkInTexas.com

Boards must be aware that in WorkInTexas.com, the *Subsidized Employment (TBTW)* service:

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- is available to track employers that receive services through the TBTW Initiative;
- must be provided when an employer has entered into an agreement to hire a TBTW participant; and
- is located within the *Additional Services* service category. All mandatory fields must be completed.

Funding and Distributions

Boards must be aware of the following:

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- **ARRA/TANF ECF funds, through the Boards' XSE contracts, must be used for wage subsidies if the TBTW participant:**
 - **has a child age 24 or younger residing in the household;**
 - **is pregnant; or**
 - **is a noncustodial parent (i.e., does not have physical and/or legal custody of his or her child by court order).**

- **Wage subsidies for all other TBTW-eligible job seekers must be funded with General Revenue funds, appropriated by Rider 31(c) through the Boards' BTW contracts.**

Boards must be aware of the following:

- Boards will be funded on the basis of their projected activity levels.
- Administrative and operational costs are expenditures that must be reported in the following cost categories:
 - *100–Administration (Direct Recipient only)*
 - *101–Administration (One-Stop Operator only)*
 - *708–Program Management & Support (Direct Recipient only)*
 - *709–Subrecipient Operating Costs (Non–One-Stop Operator)*
 - *612–Core/Intensive Services (see note)*

Note: For purposes of the Boards' XSE contracts, allowable use of the 612–Core/Intensive Services cost category is limited to charges for staff and operating costs associated with providing subsidized employment.

Except as noted for 612–Core/Intensive Services, the cost categories above have the meanings provided by WD Letter 44-09, Change 2, and subsequent issuances.

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Boards must report these and all other TBTW Initiative–funded costs in the Cash Draw and Expenditure Reporting system as outlined in the **BTW/XSE Board contracts** ~~TBTW Initiative Board contract~~. In addition, Boards must report monthly expenditures for total wages (i.e., gross wages) paid to **TBTW participants** ~~adults and summer youth~~ using supplemental cost categories.

Expenditure Limitations

To provide assistance to eligible unemployed Texans through public-private partnerships with employers, Boards must ensure that:

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- operating costs are kept to a minimum in order to maximize services and activities to participating employers and job seekers; and
- administrative costs do not exceed 10 percent.

The primary intent of funding additional temporary Employment Service (ES) staff with ARRA funds is to provide services to UI claimants. It is recommended that Boards use the additional ES staff to assist with service delivery to employers and claimants participating in the TBTW Initiative.

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Deobligation and Reallocation of Funds

Boards must be aware that under this grant award, the Commission may:

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- conduct ongoing reviews to monitor expenditures; and
- deobligate/reallocate funds previously obligated at its sole discretion.

INQUIRIES:

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

ATTACHMENT:

- Attachment 1: Texas Back-to-Work Initiative Worksite Agreement (Declining Option)
- Attachment 2: Texas Back-to-Work Initiative Worksite Agreement (Even Option)

RESCISSIONS:

WD Letter 13-10

REFERENCE:

- American Recovery and Reinvestment Act of 2009 (P.L. 111-5)
- Wagner-Peyser Act of 1933, as amended
- 20 C.F.R., Chapter V, Parts 651–652, Employment Service Operations
- 20 C.F.R., Chapter V, Part 667, Subpart B, §667.270
- Rider 31(c), Article VII, General Appropriations Act, 81st Texas Legislature, Regular Session (2009)
- Texas Labor Code §207.008 and §207.047
- WD Letter 46-09, Change 2, issued January 13, 2010, and entitled “Texas Back-to-Work Initiative—Update”

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.”