

TEXAS WORKFORCE COMMISSION LETTER

ID/No:	WD 07-08
Date:	February 7, 2008
Keyword:	Administration
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: **House Bill 1196: Repayment of Public Subsidies by Businesses
Convicted of Knowingly Employing Undocumented Workers**

PURPOSE:

This WD Letter provides Local Workforce Development Boards (Boards) with information and guidance on the requirements and restrictions set forth in House Bill (HB) 1196, enacted by the 80th Texas Legislature, Regular Session (2007), specifically:

- required language for public subsidy applications, such as Requests for Proposals, and for public subsidy contracts;
- recoupment of funds, and the applicable interest rate assessed, when a business receiving public subsidies is convicted of a violation of 8 U.S.C. §1324a(f) (unlawful employment of undocumented workers).

BACKGROUND:

Effective September 1, 2007, HB 1196 amended Subtitle F, Title 10, of the Texas Government Code to add §2264. Chapter 2264 directs public agencies, state or local taxing jurisdictions, and economic development corporations (public entities) to require that any business submitting an application to receive public subsidies include in the application a statement certifying that the business—or any branch, division, or department of the business—does not and will not knowingly employ an undocumented worker. However, Texas Government Code also specifies that—as distinct from a branch, division, or department of a business—a business is not liable for a “violation of this chapter by a subsidiary, affiliate, or franchisee of the business or by a person with whom the business contracts.”

On November 20, 2007, the Texas Workforce Commission (Commission) approved recommendations to implement requirements set forth in HB 1196 and to ensure employers and Boards are notified of the requirements to be included in future procurement instruments. In particular, HB 1196 mandates that a business

convicted of a violation under 8 U.S.C. §1324a(f) (unlawful employment of undocumented workers), shall repay the amount of the public subsidy with interest not later than the 120th day after the business is notified of the violation. The Commission determined that if a business is convicted of such a violation, the interest rate to be applied to the public subsidy is 15%.

PROCEDURES:

Boards must ensure that public subsidy procurement instruments and public subsidy contracts contain language that conveys the requirements of Texas Government Code §2264.

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Boards may use the following Texas Certification of Public Subsidy Restriction statements sample language to implement the statutory provisions of Texas Government Code §2264:

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- “Pursuant to Texas Government Code §2264.051, a business that applies to receive a public subsidy¹ from a state agency shall certify that the business, or a branch, division, or department of the business does not and will not knowingly employ an undocumented worker² as defined in Texas Government Code, §2264.001(4).”
- “The undersigned authorized representative of the entity making the offer or application herein understands and certifies that:
 - the following indicated statement is true and correct;
 - making a false statement is a material breach of contract and grounds for contract cancellation; and
 - if, after receiving a public subsidy, the entity is convicted of a violation under 8 United States Code §1324a(f) (relating to the unlawful employment of undocumented workers) the entity shall repay the amount of the public subsidy with interest, at the rate provided under the contract issued pursuant to this offer or application, within 120 days of receiving the notice of violation.”

Before awarding a public subsidy to a business, Boards must:

- enter into a written agreement with the business that specifies the rate and terms of the payment of interest if the business is required to repay the public

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¹ *Public subsidy* is broadly defined Texas Government Code §2264.001(3)) as a public program or public benefit or assistance of any type that is designed to stimulate the economic development of a corporation, industry, or sector of the state’s economy or to create or retain jobs in Texas. The term includes, among other things, bonds, grants, loans, loan guarantees, benefits relating to an enterprise or empowerment zone, infrastructure development and improvements designed to principally benefit a single business or defined group of businesses, and matching funds. The Commission’s Office of General Counsel has found that HB 1196 does not apply to the acquisition of goods and services.

² *Undocumented worker* is defined as an individual who, at the time of employment, is not lawfully admitted for permanent residence in the United States, or is not authorized under law to be employed in that manner in the United States.

- subsidy, either using the language supplied in this WD Letter or substantially similar language developed by the Board; and
- ensure that the written agreements of any subcontractors providing public subsidies to businesses specify the rate and terms of the payment of interest if the business is required to repay the public subsidy, either using the language supplied in this WD Letter or substantially similar language developed by the Board.

When specifying the rate and terms of payment of interest, Boards may establish their own interest rate, as long as it is not less than the Commission-approved 15%.

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Boards must be aware that, in the event that a business grantee is found in violation of 8 U.S.C. §1324a(f), consistent with the requirements of Texas Government Code §2264, Boards are permitted to bring a civil action to recover any amounts owed, as well as court costs and reasonable attorney's fees.

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INQUIRIES:

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

RESCISSIONS:

None

REFERENCE:

United States Code, Chapter 8, §1324
Texas Finance Code §304
Texas Government Code §2251
Texas Government Code §2264 (House Bill 1196, 80th Legislature, Regular Session (2007))

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.”