TEXAS WORKFORCE COMMISSION LETTER

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Date:	November 20, 2009
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Effective:	Immediately

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

Laurence M. Biscoe for

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

Subject: **Implementation of Amended Chapter 800 Rules for the Deobligation and Reallocation of Commission-Allocated Funds**

PURPOSE:

To provide Local Workforce Development Boards (Boards) with information and guidance for implementing the Texas Workforce Commission's (Commission) amended Chapter 800 General Administration rules for the deobligation and reallocation of Commission-allocated funds to local workforce development areas (workforce areas).

BACKGROUND:

On August 25, 2009, the Commission adopted the amended Chapter 800 rules. The rules, effective September 14, 2009, can be accessed at http://www.twc.state.tx.us/twcinfo/rules/ch800.pdf.

The purpose of the adopted amendments is to provide the Commission with additional flexibility in its review of underlying factors or causes for the underexpenditure of Commission-allocated funds by a Board.

On November 10, 2009, the U.S. Department of Labor Employment and Training Administration notified the Commission of the disapproval of its Workforce Investment Act (WIA) deobligation and reallocation waivers. Therefore, to the extent the Commission rules at §800.74 and §800.77 do not comply with federal requirements based on the disapproval of the waivers, the Commission will be subject to federal requirements in effect, as applicable.

The amended rules clarify the following:

- The Commission allocates funds to workforce areas.
- The Commission continues to review potential deobligation amounts in months five through eight for non-WIA formula funds based on an evaluation of a Board's expenditures; the rules removed criteria that previously limited the scope of the Commission's review such as the three-month look-back period and performance on Commission-contracted and non-contracted measures.
- The expanded scope of the Commission's evaluation of factors that impact expenditures includes Board performance on contracted measures, specifically service delivery factors that contribute to performance and funds utilization within a workforce area;
- Boards are required to notify the Board Chair when requesting a voluntary deobligation of funds.
- The Commission's review of requests for reallocated funds in months five through eight of the appropriate program year are based on an evaluation of a Board's ability to use funds, the performance factors, and a demonstrated need in the workforce area.

PROCEDURES:

Boards must ensure that appropriate staff is aware of and adheres to the requirements, procedures, and time frames set forth in Chapter 800 and in this WD Letter. **NLF**

Boards must be aware of the following: **NLF**

Under the reinstated federal requirements, WIA formula funds are subject to:

- an 80 percent obligation requirement following the end of the first program year; and
- a 100 percent expenditure requirement following the end of the second program year.

Non-WIA formula funds are subject to a 90 percent expenditure requirement.

Note: The Commission will continue to establish an 80 percent expenditure benchmark following the end of the first program year in order for Boards to be eligible for WIA statewide alternative funds, and as a criterion for the receipt of WIA exemplary awards.

The new procedures regarding deobligation of Board-administered funds are in effect for contracts beginning:

- July 1, 2009, for WIA formula funds allocated for Program Year 2009 and Program Year 2008 (second year of availability) and continuing; and
- October 1, 2009, for all other program funds allocated for Fiscal Year 2010 and Board Contract Year 2010 and continuing.

WIA Formula Funds
The Commission conducts an end-of-year review for WIA formula funds. Funds in excess of 20 percent of the allocation, less any amount reserved for administration (up to 10 percent), for each category of WIA formula-allocated funds that are unobligated are subject to deobligation.

WIA formula funds are not subject to midyear deobligation; however, the Commission will continue to actively oversee WIA service delivery, including evaluations of expenditures and performance, and will provide Boards with needed technical assistance.

Non-WIA Funds
The Commission conducts midyear reviews of expenditures in the fifth through eighth program months (i.e., February through May).

Midyear Deobligation Process for Commission-Allocated Funds
Commission-Allocated Funds Other Than WIA Formula Funds
Boards must be aware that Commission bases a potential deobligation only on a Board's failure to achieve the expenditure of an amount corresponding to 90 percent or more of the relative proportion of the program year, the earliest of which would be the fifth month of the program year and the latest of which would be the eighth month of the program year. **NLF**

> For example, at the end of the sixth month of the program year, 50 percent of the program year is completed and 90 percent of 50 percent equals 45 percent—which is the lowest expenditure level to be achieved in order to avoid a potential deobligation.

Prior to Commission consideration of a potential deobligation, Boards may provide information to justify their current and projected expenditure levels, pertinent performance data, and service levels. **LF**

However, Boards must be aware that the Commission also holds Boards accountable for fully using Commission-allocated funds to address the needs of job seekers and employers within the workforce area. **NLF**

Upon receiving a formal request from the Commission, a Board must provide a service delivery plan, with sufficient detail, to ensure the specific strategies and actions the Board has undertaken or will undertake will assist the workforce area to expend funds fully within the program year. **NLF**

The Commission will notify the Board of the potential deobligation amount, and the Board must provide a service delivery plan, with detailed information on the actions the Board will take to address its deficiencies, such as: **NLF**

- expansion of services proportionate to the available resources (i.e., whether the Board plans to increase services and activities for customers and/or increase the number of customers served including the number of customers in training);
- projected service levels and related performance (i.e., projected increases in the number of customers receiving services, the projected increases in services, and associated performance outcomes);
- reporting outstanding obligations (i.e., description of services or activities that are reported as obligations and projected time frames for expensing these obligations); and
- any other factors a Board wishes the Commission to consider.

Contract Amendments within 60 Days of Review Period

Boards must be aware that the Commission will not deobligate funds if, less than 60 days prior to the potential deobligation period, a contract amendment has been executed with the Board for a supplemental allocation or reallocation of funds in the same program category of funding. **NLF**

Second Year of Availability of WIA Formula Funds

Boards must be aware that after the 12th month following the beginning of a program year, the Commission can deobligate any unobligated funds that exceed 20 percent of the allocation, less any amount reserved for administration (up to 10 percent), for each category of WIA formula-allocated funds for the prior program year. **NLF**

Boards also must be aware that expenditure reviews will be conducted monthly. **NLF**

Voluntary Deobligation

Boards may voluntarily deobligate funds when current allocations exceed the needs of their service delivery strategies. **LF**

Boards must ensure that the Board Chair is notified of a request to voluntarily deobligate funds from a workforce area. **NLF**

Reallocation of Funds

Boards must be aware that the Commission can reallocate available balances of Commission-allocated funds to eligible workforce areas. **NLF**

Boards must submit written requests for additional funds that the Commission makes available for reallocation. **NLF**

Boards may submit the requests to their assigned contract manager at any time during the contract period. **LF**

Boards must be aware that the Commission will develop reallocation recommendations for non-WIA formula funds based on: **NLF**

- amounts specified in the Board's written request for additional funds;
- demonstrated ability of the Board to effectively expend funds to address the need for services in the workforce area;
- Board performance during the current and prior program year; and
- related factors, as necessary, to ensure the funds are fully used.

Boards must be aware that to be eligible to receive reallocated WIA formula funds, they must have obligated at least 80 percent of the prior program year's allocation. A workforce area's eligibility to receive a reallocation will be determined separately for each funding stream. **NLF**

INQUIRIES:

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

RESCISSIONS:

None

REFERENCE:

Texas Government Code §301.0015 and §302.002

Texas Workforce Commission General Administration Rules: 40 TAC §800.52, §800.71, and §§800.74–800.77

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."