

## WIOA WAIVER GUIDANCE

### EXECUTIVE SUMMARY

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This policy provides the guidance and establishes the procedures regarding the implementation and utilization of *Workforce Innovation and Opportunity Act* (WIOA) waivers approved by the US Department of Labor (DOL). This policy applies to Local Workforce Development Boards (Local Board) and is effective immediately.

This policy contains only state-imposed requirements.

This Directive finalizes Workforce Services Draft Directive *WIOA Waiver Guidance* (WSDD-241), issued for comment on February 3, 2023. The Workforce Development Community submitted one comment during the draft comment period. A summary of comments, including all changes, is provided as Attachment 4.

This policy supersedes Workforce Services Directive *COVID-19 WIOA Waiver Guidance* (WSD20-13) dated June 9, 2021, and Workforce Services Information Notice *WIOA Waiver for Out-of-School Youth Expenditure – PY 22-23* (WSIN22-06), dated July 26, 2022. Retain this Directive until further notice.

### REFERENCES

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- *WIOA* (Public Law 113-128) Sections 3, 129, 134, and 189
  - Title 20 *Code of Federal Regulations* (CFR), Part 680: Adult and Dislocated Worker Activities Under Title I of the Workforce Innovation and Opportunity Act, Section 680.190
  - Training and Employment Guidance Letter (TEGL) 8-18, *WIOA Title I and Wagner-Peyser Act Waiver Requirements and Request Process* (December 19, 2018)

### BACKGROUND

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In order to provide Local Boards with additional flexibility when assisting individuals from the most vulnerable populations and with high barriers to employment, and as part of the

*The EDD is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities.*

California Unified Strategic Workforce Development Plan Modification, the California Workforce Development Board (CWDB) and the Employment Development Department (EDD) requested and were approved for three WIOA waivers from the DOL:

- **Waiver of WIOA Section 134(d)(5)**  
This waiver allows up to 30 percent of WIOA Title I adult and dislocated worker local formula funds to be used for the provision of transitional jobs.
- **Waiver of WIOA Section 134(c)(3)(H)(i)**  
This waiver allows up to 90 percent reimbursement of on-the-job training (OJT) costs for businesses with 50 or fewer employees.
- **Waiver of WIOA Section 129(a)(4)(A)**  
This waiver allows the decrease of the out-of-school youth (OSY) expenditure requirement from 75 percent to 50 percent.

## POLICY AND PROCEDURES

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Under the DOL Secretary's waiver authority outlined in WIOA Section 189(i)(3)(A) and detailed in TEGL 8-18, the Secretary may waive certain provisions of WIOA Title I. Part of the waiver lifecycle requires states to estimate and then regularly assess whether the waiver is successfully achieving state goals.

As the goal of waivers is to provide opportunities to innovate and experiment with new approaches to service delivery, states with approved waivers must provide detailed reports in the WIOA annual report addressing the waivers' impact and outcomes. The DOL will consider outcome information as part of the criteria for granting renewal of a waiver, if requested.

The following waivers were approved as part of the Unified Strategic Workforce Development Plan Modification and may be used by Local Boards from July 1, 2023 – June 30, 2024.

### **Transitional Jobs Waiver**

According to 20 CFR 680.190, a transitional job is one that provides time-limited work experience, that is wage-paid and subsidized and in the public, private, or non-profit sectors for individuals with barriers to employment who are chronically unemployed or have inconsistent work history, as determined by the Local Board. These jobs are designed to enable an individual to establish a work history, demonstrate work success in an employee-employer relationship, and develop skills that lead to unsubsidized employment.

WIOA Section 134(d)(5), states that a Local Board may use up to 10 percent of their combined WIOA Title I adult and dislocated workers formula funds for the provision of transitional jobs. The transitional jobs waiver allows up to 30 percent of a Local Board's combined WIOA Title I adult and dislocated workers formula funds to be used for the provision of transitional jobs.

Subsidized employment is a proven tool for encouraging employers to hire new employees, especially individuals with barriers to employment, to meet new and changing economic demands, and can be mutually beneficial for job seekers and employers. Due to the economic impact of the COVID-19 pandemic, utilizing transitional job placements could be a critical service delivery strategy, especially for participants with significant barriers to employment who are struggling to attach or re-attach to the labor market.

The transitional jobs waiver provides Local Boards with increased flexibility to provide transitional employment to individuals with barriers to employment in order to gain both income and work experience. Utilizing this waiver could also assist employers who may need to hire additional employees to adjust and meet new service standards and operating procedures.

### *Projected Programmatic Outcome*

As part of the waiver request, California projected that increasing the percentage of adult and dislocated worker funds spent on transitional jobs would lead to an estimated 10 percent increase in the number of adults and dislocated workers placed in transitional jobs for each full program year (PY) the waiver is in effect.

While Local Boards will not be sanctioned if they do not meet the 10 percent increase, not meeting the target could impact the state's ability to renew this waiver in the future.

### **On-the-Job Training Waiver**

According to WIOA Section 3(44), OJT is training provided by the employer to be a paid participant while they are engaged in productive work in a job that provides knowledge or skills essential to the full and adequate performance of the job. It is also limited in duration as appropriate to the occupation for which the participant is being trained, the content of the training, taking into account the prior work experience and the service strategy of the participant.

Under WIOA Section 134(c)(3)(H)(i), a Local Board may reimburse the employer up to 50 percent of the wage rate of an OJT participant for the extraordinary costs of providing the training and additional supervision related to the training. This waiver would allow Local Boards to reimburse up to 90 percent of the wage rate of an OJT participant for the extraordinary costs of providing training and additional supervision related to the training if the business has 50 or fewer employees.

Most businesses in California are small businesses that have drastically modified their service-delivery methods and procedures to adapt to the COVID-19 pandemic. In addition to changing business practices, small businesses have adjusted to a decrease in supply and access to goods, services, employees, and patrons, while simultaneously acclimating to changes in demand and increasing the production of crucial goods and services. This waiver would allow Local Boards to provide additional relief to small businesses that may be more risk-averse when it comes to hiring and training new employees during this time of economic instability.

### *Projected Programmatic Outcome*

As part of the waiver request, California projected that increasing the OJT reimbursement rate for businesses with 50 or fewer employees would lead to a 25 percent increase in the number of adults and dislocated workers placed in OJT with small businesses for each full PY the waiver is in effect.

While Local Boards will not be sanctioned if they do not meet or exceed the 25 percent increase, not meeting this goal could impact the state's ability to renew this waiver in the future.

Local Boards approved to use this waiver will be required to ensure the waiver is only applied to businesses with 50 or fewer employees. While the state will not dictate how this verification occurs, Local Boards must retain records that show adherence to this requirement (e.g., validate employer account number, verify with Dun & Bradstreet Corp, etc.).

### **Out-of-School Youth Expenditure Waiver**

According to WIOA Section 129(a)(1)(B), an OSY means an individual who is not attending any school, is not younger than 16 or older than 24 and is one or more of the following:

- A school dropout.
- A youth who is within the age of compulsory school attendance but has not attended school for at least the most recent complete school year calendar quarter.
- A recipient of a secondary school diploma or its recognized equivalent who is a low-income individual and is basic skills deficient or an English language learner.
- An individual who is subject to the juvenile or adult justice system.
- A homeless individual, a runaway, in foster care, or who has aged out of the foster care system, a child eligible for assistance under Section 477 of the *Social Security Act*, or in an out-of-home placement.
- An individual who is pregnant or parenting.
- A youth who is an individual with a disability.
- A low-income individual who requires additional assistance to enter or complete an educational program or to secure or hold employment.

Under WIOA Section 129(a)(4)(A), Local Boards are required to spend at least 75 percent of their WIOA youth formula allocation on youth workforce investment activities for OSY. This waiver would allow a Local Board to decrease their OSY expenditure requirement from 75 percent to 50 percent in order to increase their in-school youth (ISY) enrollments of systems-involved youth, specifically youth who are homeless, in foster care, or are justice-involved.

### *Projected Programmatic Outcome*

As part of the waiver request, California projected that Local Boards that apply for and use the waiver will see an increase of approximately 15 percent in the total number of ISY they enroll who meet the WIOA-defined youth barriers related to foster care, justice-involved, and/or homelessness.

While Local Boards will not be sanctioned if they do not meet or exceed the 15 percent increase, not meeting the target could impact the state’s ability to renew this waiver.

### **Waiver Application Process**

The DOL requires the state to evaluate the effectiveness of waivers as part of the WIOA Annual Report. Therefore, the state must track which Local Boards are using the waivers.

In order to use any of the three approved waivers, Local Boards must submit an application. Electronic signatures on the applications will be accepted. Additionally, in order to comply with the DOL requirements, applications must be completed and approved every year the waiver is in effect. To establish consistency and afford Local Boards ample time to meet competing Directive deadlines, the CWDB anticipates very minimal changes to the content of the waiver applications each year.

Applications for PY 23-24 are **due by Friday, May 26, 2023**, and must be electronically signed by the Local Board Executive Director and submitted electronically to [PolicyUnit@cwdb.ca.gov](mailto:PolicyUnit@cwdb.ca.gov). Please include “WIOA Waiver Request Application” in the subject line. The CWDB will review the applications and notify Local Boards by June 9, 2023, through email of their approval or denial.

### **ACTION**

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Bring this Directive to the attention of the local Chief Elected Official, Local Board, and appropriate staff.

### **INQUIRIES**

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If you have any questions about this Directive, contact the CWDB at [PolicyUnit@cwdb.ca.gov](mailto:PolicyUnit@cwdb.ca.gov).

/s/ JAVIER ROMERO, Deputy Director  
Workforce Services Branch

Attachments:

1. [Application for Transitional Jobs Waiver \(DOCX\)](#)
2. [Application for On-the-Job Training Waiver \(DOCX\)](#)
3. [Application for Out-of-School Youth Waiver \(DOCX\)](#)
4. [Summary of Comments \(DOCX\)](#)