

WORKFORCE SERVICES DIRECTIVE

Number: WSD15-09

Date: November 20, 2015
69:175:rc:17613

TO: WORKFORCE DEVELOPMENT COMMUNITY

SUBJECT: IMPACT OF WIOA IMPLEMENTATION ON WAIVERS APPROVED UNDER WIA

EXECUTIVE SUMMARY

Purpose

This policy provides guidance on how the implementation of the *Workforce Innovation and Opportunity Act* (WIOA) affects 10 statewide waivers previously granted to California under the *Workforce Investment Act* (WIA).

Note that, at the time of issuance, the Employment Development Department (EDD) established this guidance using the WIOA Notices of Proposed Rule Making (NPRM). The policies and procedures may be subject to change upon issuance of the final regulations.

Scope

This directive applies to all Local Workforce Development Areas (Local Area).

Effective Date

This directive is effective on the date of issuance.

REFERENCES

- WIA Sections 101(8)(C), 101(31)(B), 112(b)(18)(B), 117(d)(2)(B), 117(e), 117(h)(4)(b)(i and ii), 122(c), 123, 129(b)(2)(C), 129(c)(2), 133(b)(4), 134 (a), 134(a)(1)(A), 134(d), and 136(b)
- WIOA (Public Law 113-128) Sections 3(14)(C), 133(b)(4), 134(c)(3)(H), and 134(d)(4)(a)(i)
- Title 20 *Code of Federal Regulations* (CFR) Sections 661.420, 663.530, 663.710, 664.405, 664.460, 664.510, 664.610 665.200(d), 665.200(e), 665.200(h), and 667.140,
- Title 20 NPRM Sections 680.800, 681.400(b), and 681.550

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

- Training and Employment Guidance Letter ([TEGL 01-15](#), *Operations Guidance Regarding the Impact of Workforce Innovation and Opportunity Act Implementation on Waivers Approved Under the Workforce Investment Act* (July 1, 2015))
- [TEGL 38-14](#), *Operational Guidance to Support the Orderly Transition of Workforce Investment Act Participants, Funds, and Sub recipient Contracts to the Workforce Innovation and Opportunity Act* (June 8, 2015)
- [TEGL 17-05](#), *Common Measures Policy for the Employment and Training Administration's Performance Accountability System and Related Performance Issues* (February 17, 2006)
- California [Senate Bill \(SB\) 118](#) Chapter 562, Statutes of 2013
- Workforce Services Directive ([WSD 14-12](#)), Subject: *Waivers for OJT Training and Youth Procurement and New Waiver Process*
- [WSD 13-10](#), Subject: *Eligible Training Provider List Policy and Procedures*
- [WSD 13-8](#), Subject: *WIA Statewide Waivers and State Plan PY 2013-2017*
- [WSDD-120](#), Subject: *WIOA Eligible Training Provider List – Policy and Procedures*

STATE-IMPOSED REQUIREMENTS

This directive contains no state-imposed requirements.

FILING INSTRUCTIONS

This directive finalizes Workforce Services Draft Directive WSDD-127, dated September 23, 2015. The Central Office Workforce Services Division received two comments during the comment period. A summary of comments is provided as an attachment. Retain this directive until further notice.

For information on California waivers under WIA, refer to [WSD 14-12](#), dated April 24, 2015 and [WSD 13-8](#), dated January 8, 2014.

BACKGROUND

Prior to the implementation of WIOA on July 1, 2015, the Department of Labor (DOL) granted California 10 waivers under WIA. They include the following:

- WIA Section 122(c) – Waives the time limit on the period of initial eligibility of training providers.
- WIA Section 133(b)(4) – Increases the allowable transfer amount between adult and dislocated worker funding streams allocated to a Local Area.
- WIA Section 134(a) – Permits Local Areas to use a portion of local funds for incumbent worker training (IWT).
- WIA Section 134(a)(1)(A) – Permits a portion of the funds reserved for rapid response (RR) activities to be used for IWT.
- Title 20 CFR 664.510 – Waives the prohibition to use individual training accounts (ITA) for older and out-of-school youth.

- WIA Section 101(8)(C) – Waives the required 50 percent employer contribution for customized training.
- WIA Section 101(31)(B) – Allows an increase in the employer reimbursement for on-the-job training (OJT) through a sliding scale based on the size of the business.
- WIA Section 101(31)(B) – Allows an increase in the employer reimbursement for OJT for long-term unemployed, veterans, and individuals with disabilities.
- WIA Section 123 – Waives the requirement for competitive procurement of service providers for three of the 10 youth program elements.
- WIA Section 136(b) – Permits the state to replace the performance measures with the common measures.

On July 1, 2015, the DOL released [TEGL 01-15](#), outlining the Employment and Training Administration’s (ETA) guidance on waivers approved by the Secretary of DOL under WIA. The TEGL states that the Secretary’s waiver authority under WIA does not extend to the provisions of WIOA. However, WIOA does provide the Secretary with the authority to take appropriate actions for the orderly transition from WIA to WIOA. Therefore, the ETA conducted an analysis of each waiver to determine which waivers may remain in place for Program Year (PY) 2015-16 and which WIA waivers were terminated on June 30, 2015.

POLICY AND PROCEDURES

The following guidance outlines how the 10 waivers approved for California under WIA are affected by the implementation of WIOA. The waivers are separated into three categories: Expired Waiver(s), Waiver(s) continuing through PY 2015-16 with obligated funds, and Waiver(s) continuing through PY 2015-16.

Category 1: Expired Waiver(s)

The following waiver expired June 30, 2015.

1. Eligibility of Training Providers

This waiver suspended the subsequent eligibility certification requirements of WIA Section 122(c). Under this waiver, the state postponed the determination of subsequent eligibility of training providers.

Current Guidance

The EDD and the California Workforce Development Board (State Board) issued a directive establishing initial and subsequent eligibility criteria for providers on the Eligible Training Provider List under WIOA.

Category 2: Waiver(s) Continuing Through PY 2015-16 with Obligated Funds

The following waivers are permitted to continue through PY 2015-16 with funds that have already been obligated as of June 30, 2015. For the purposes of this guidance, “obligated

funds” means that a Local Area has an executed contract in place. For more information regarding the transition of funds from WIA to WIOA, please refer to [TEGL 38-14](#).

1. *Transfer of Adult and Dislocated Worker Formula Funds*

This waiver authorized an increase of the funds transfer limitation at WIA Section 133(b)(4). The waiver authorized Local Areas to transfer up to 50 percent of the adult and dislocated worker formula funds.

Current Guidance

Under WIOA, Local Areas can transfer up to 100 percent between the adult and dislocated worker funding streams with approval from the Governor (WIOA Section 133[b][4]).

2. *Use of Local Funds for Incumbent Worker Training Activities*

The waiver of WIA Section 134(a) permitted Local Areas to use up to 10 percent of the adult and dislocated worker formula funds for IWT as part of a layoff aversion strategy.

Current Guidance

Under WIOA, Local Areas may use up to 20 percent of their combined total of adult and dislocated worker allotments for IWT (WIOA Section 134[d][4][a][i]).

3. *Use of Rapid Response Funds to Conduct Incumbent Worker Training Activities*

The waiver of WIA Section 134(a)(1)(A) permitted Local Areas to use up to 20 percent of RR funds for IWT as part of a layoff aversion strategy.

Current Guidance

According to the WIOA NPRM, Local Areas may use their RR funds for statewide incumbent worker training activities (NPRM 680.800).

4. *Individual Training Accounts*

This waiver removed the prohibition of using ITAs for older and out-of-school (OS) youth participants found at Title 20 CFR 664.510.

Current Guidance

According to the WIOA NPRM, Local Areas may use ITAs for OS youth participants ages 18-24 when using WIOA youth funds (NPRM 681.550).

5. *Customized Training*

This waiver allowed the state to remove the required 50 percent employer contribution for customized training at WIA Section 101(8)(C) and use a sliding scale for the employer contribution based on the size of the business.

Current Guidance

Under WIOA, the definition of customized training states that an employer pays a significant portion of the cost of training, as determined by the Local Workforce

Development Board (Local Board) involved, taking into account the size of the employer and other factors as the Local Board determines to be appropriate (WIOA Section 3[14][C]).

6. *Increase in Employer Reimbursement for OJT Through a Sliding Scale Based on the Size of the Business*

This waiver of WIA Section 101(31)(B) allowed the state to increase the employer reimbursement rate for OJT through a sliding scale based on the size of the business. Under this waiver, employers with 50 or fewer employees are allowed up to a 90 percent reimbursement rate. Employers with 51-250 employees are allowed up to a 75 percent reimbursement rate. Employers with more than 250 employees are allowed up to a 50 percent reimbursement rate.

Current Guidance

Under WIOA, the Governor may authorize up to a 75 percent reimbursement rate for OJT for statewide activities and Local Boards may authorize up to a 75 percent reimbursement rate for OJT for local activities, taking into account certain factors (WIOA 134[c][3][H]).

7. *Increase in Employer Reimbursement for OJT for Long-Term Unemployed, Veterans, and Individuals with Disabilities*

This waiver allowed the state to increase the employer reimbursement rate for OJT through a sliding scale for long-term unemployed, veterans, and individuals with disabilities. Under this waiver, a 75 percent employer reimbursement rate is allowed where OJT is provided to an individual unemployed between 16-51 weeks. A 90 percent employer reimbursement rate is allowed where OJT is provided to an individual unemployed for 52 weeks or more. A 90 percent employer reimbursement rate is also allowed where OJT is provided to a veteran or individual with a disability.

Current Guidance

Under WIOA, the Governor may authorize up to a 75 percent reimbursement rate for OJT for statewide activities and Local Boards may authorize up to a 75 percent reimbursement rate for OJT for Local activities, taking into account certain factors (WIOA 134[c][3][H]).

8. *Competitive Procurement for Youth Elements*

This waiver removed the requirement for Local Areas to competitively procure youth providers for three of the 10 youth program elements: supportive services, follow-up services, and work experience.

Current Guidance

According to the WIOA NPRM, the requirements of WIOA Section 123 concerning competitive procurement of youth providers do not apply to the design framework services when these services are more appropriately provided by the grant recipient/fiscal agent. Design framework services include intake, objective assessments

and the development of individual service strategy, case management, and follow-up services (NPRM 681.400[b]).

Category 3: Waiver(s) Continuing Through PY 2015-16

Since WIOA performance requirements will not take effect until July 1, 2016, the DOL Employment and Training Administration will continue to honor the waiver that permits the state to replace the performance measures with the common measures through June 30, 2016.

1. *Common Measures*

This waiver allows the state to replace the 17 performance measures under WIA Section 136(b) with the DOL Common Measures. Further information regarding the DOL Common Performance Measures can be found in [TEGL 17-05](#).

Current Guidance

Under WIOA, new performance requirements will not take effect until July 1, 2016 (WIOA Section 116).

ACTION

Please bring this guidance to the attention of all relevant parties.

INQUIRIES

If you have any questions, please contact your [Regional Advisor](#) or call 916-654-7799.

/S/ JOSÉ LUIS MÁRQUEZ, Chief
Central Office Workforce Services Division

Attachments are available on the Internet:

1. [Summary of Comments](#)