

DIRECTIVE
WORKFORCE SERVICES

Number: WSD14-3
Date: September 3, 2014
69:184:df:16947

TO: WORKFORCE DEVELOPMENT COMMUNITY

SUBJECT: RAPID RESPONSE AND LAYOFF AVERSION ACTIVITIES

EXECUTIVE SUMMARY:

Purpose:

This document consolidates previous Workforce Investment Act (WIA) Rapid Response guidance into a single comprehensive directive, and distinguishes Rapid Response activities from Additional Assistance. This directive also provides Local Workforce Investment Areas (local areas) a policy framework to design and implement layoff aversion strategies as outlined in California's WIA 5-Year Strategic Workforce Development Plan and the local area strategic plans.

This directive does not make any changes to current formula allocation methods of Rapid Response funds, but it allows flexibility for using Rapid Response special project funds for layoff aversion activities.

Scope:

This directive applies to all recipients of WIA 25 Percent Dislocated Worker funds.

Effective Date:

This directive is effective upon release.

REFERENCES:

- WIA Sections 101(38), 133(a)(2), and 134(a)(2)(A)
- Title 20 Code of Federal Regulations (CFR) Sections 639, 665.310, 665.320(d), and 667.262(b)
- U.S. Department of Labor (DOL) Training and Employment Guidance Letter (TEGL) [27-12](#), Funds Administration Flexibility for WIA Title I and Wagner-Peyser Act (WPA) of 1933 Funds (May 10, 2013)
- DOL [TEGL 26-09 Change 1](#), WIA Waiver Policy and Waiver Decisions for Program Year (PY) 2009 and 2010, Change 1 (August 16, 2012)

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

- DOL [TEGL 33-11](#), Annual Program Guidance for the PY 2012 WIA Adult, Dislocated Worker, and WPA programs (June 8, 2012)
- DOL [TEGL 30-09](#), Layoff Aversion Definition and the Appropriate Use of WIA Funds for Incumbent Worker Training (IWT) for Layoff Aversion Using a Waiver (June 8, 2010)
- DOL Training and Employment Notice (TEN) [09-12](#), Layoff Aversion in Rapid Response Systems (August 31, 2012)
- DOL [TEN 31-11](#), The Rapid Response Framework (March 1, 2012)
- DOL [TEN 32-11](#), Rapid Response Self-Assessment Tool (March 1, 2012)
- DOL [TEN 03-10](#), The National Rapid Response Initiative (August 9, 2010)
- California Labor Code Sections [1400-1408](#)
- California Unemployment Insurance Code Section 1253
- [California's Strategic Workforce Development Plan: 2013-2017](#), *Shared Strategy for a Shared Prosperity*
- Workforce Services Directive [WSD13-8](#), WIA Statewide Waivers and State Plan PY 2013-2017 (January 8, 2014)
- [WSD12-3](#), Quarterly and Monthly Financial Reporting Requirements (July 18, 2012)
- [WSD13-1](#), Authorization to Work Verification Requirements (July 2, 2013)
- WIA Directive [WIAD05-18](#), Dislocated Worker 25 Percent Funding Policy (June 14, 2006)
- [WIAD04-22](#), State Required Surveys of Dislocated Workers (June 15, 2005)
- [WIAD04-18](#), Title I Eligibility (March 29, 2005)
- [WIAD02-9](#), Worker Displacement Prohibition (November 22, 2002)
- [WIAD01-14](#), Layoffs, Furloughs, Temporary Layoffs and Lockouts (March 11, 2002)
- Workforce Services Information Notice [WSIN13-70](#), Program Year 2014 Rapid Response Funding (June 12, 2014)
- [WSIN13-9](#), Keep Your Home California Campaign and Rapid Response Events (August 9, 2013)
- [WSIN11-5](#), California Training Benefits (CTB) Program Changes, CTB Streamline Refresher Training and Forms Update (August 2, 2011)

STATE IMPOSED REQUIREMENTS:

This directive contains only State-imposed requirements.

FILING INSTRUCTIONS:

This directive supersedes Workforce Services Directive WSD12-7, dated August 15, 2012, WSD09-13, dated March 4, 2010, WIA Directive WIAD02-13, dated April 24,

2003, and finalizes Draft Directive WSDD-105, issued for comment on June 10, 2014,. The Workforce Services Division received 24 comments during the comment period. The comments resulted in two changes to the directive which are viewed as highlighted text. The highlighted text will remain on the Internet for 30 days from the issuance date. A summary of the comments is provided as Attachment 7. Retain this directive until further notice.

BACKGROUND:

Federal law requires that states set aside not more than 25 percent of their WIA Dislocated Worker funding for two statewide activities:

- 1) Rapid Response to assist workers and businesses at risk of layoff or affected by layoff, and
- 2) Additional Assistance for Local Workforce Investment Boards (local boards) to apply for if there is a significant increase in unemployment in their areas caused by plant closure, downsizing, natural disaster, or “other events.”

Federal law provides discretion to the Governor to develop specific policy. In California current policy is to formula-allocate the Rapid Response funds (half of the total 25 percent funds) to local areas.

California’s Rapid Response system has evolved since the implementation of WIA, with several local boards leading innovative and proactive local Rapid Response systems. In addition, the DOL has continued to issue guidance encouraging states to include layoff aversion as an integral component of Rapid Response policy.

In response to this evolution, the California Workforce Investment Board (State Board) established a Rapid Response/Layoff Aversion Workgroup to consolidate various State guidance into a single comprehensive document and to recommend policy that promotes proactive layoff aversion strategies that can assist a business that wants to avoid layoffs or, in the event of layoffs, assist workers in quickly re-entering the workforce.

Rapid Response

The primary purpose of Rapid Response as related in federal guidance is to enable affected workers to return to work as quickly as possible following a layoff, or to prevent layoffs altogether. To accomplish this, the workforce development system must be coordinated, comprehensive, and proactive in communicating with business. This includes providing labor market and workforce information, integrating industry requirements into training strategies and career pathways, brokering relationships and job connections, making services efficient and easy to access, and coordinating with regional partners to reduce duplication.

A sound Rapid Response infrastructure should include early warning systems which are necessary to ensure a timely response to worker dislocations. Early indicators can be recognized in a variety of ways including through close communication with employer representatives, industry groups, organized labor, utilities, or through local media. Rapid Response also tracks labor market trends, increased unemployment

insurance claims, and public announcements through the [California Worker Adjustment and Retraining Notification Act \(WARN\)](#) notice. In each region, systems should be in place to regularly monitor all potential early warning indicators and notification channels, and employers must be informed about their legal responsibilities to issue advance notifications of layoffs and closures.

It is critical that regional Rapid Response teams build relationships with employers, labor organizations, workforce and economic development agencies, training institutions, service providers and community-based organizations. Proactive Rapid Response systems rely on good intelligence. Their value to economic development efforts can be increased by providing ready access to information regarding available talent. States gain a competitive edge when they can leverage accurate information about regional economic trends, labor markets, new business development, impending layoffs, regional assets, and education and training resources.

The Role of Layoff Aversion in Rapid Response

[California's Strategic Workforce Development Plan: 2013-17](#), *Shared Strategy for a Shared Prosperity*, calls for the development and implementation of a "...layoff aversion strategy that helps retain workers in their current jobs and/or provides rapid transitions to new employment, minimizing periods of unemployment" (Chapter IV, under common goals for Adults). Layoff aversion is a central component of a high-performing Rapid Response strategy, requiring a shared responsibility among numerous partners at the state, regional, and local levels. The WIA Regulations (Title 20 CFR 665.310) describe required Rapid Response activities, including that Rapid Response teams assess, "...the potential for averting the layoff in consultation with the State or local economic development agencies, including private sector economic development entities." Section 665.320 provides more context for allowable layoff aversion activities.

It is important to emphasize that Rapid Response does not stop layoffs. Only a company can save jobs. The intent here is to offer assistance to companies that request it and to save jobs. Additionally, it is often too late to avert layoffs at the time a closure is announced. To save jobs, a Rapid Response team must be able to identify an at-risk company well in advance of layoffs, get executive level commitment to work together, assess the needs of the company, and deliver services to address risk factors. This requires a new Rapid Response culture of prevention and a strong infrastructure, including clarity of roles among regional partners. It requires data collection and analysis of trends, early warning mechanisms that can alert of problem areas, and well-trained staff.

Led by local boards, Rapid Response teams should be regional partnerships among a range of organizations and intermediaries that can help identify and design appropriate interventions. Partners should include the Department of Commerce's Trade Adjustment Assistance for Firms, the Manufacturing Extension Partnership, public and private economic development entities, Chambers of Commerce, Small Business Development Centers, community-based organizations, community colleges, local labor councils, and others.

Rapid Response activities such as those described in Title 20 CFR 665.320(d), customized training, dislocated worker services, employment services, and

prefeasibility studies are among the many WIA funded components that the workforce system can deploy to assist companies in averting layoffs.

A valuable resource is the use of incumbent worker training (IWT), which can provide needed skills upgrading for existing workers. The Employment Training Panel is an important source of IWT funding. Additionally, California has been granted a waiver from the DOL to use a portion of local WIA funds to provide IWT as part of a layoff aversion strategy. Another important tool is California's Work Sharing program, which allows for the payment of unemployment insurance benefits to individuals whose wages and hours have been reduced. This program is an effective and practical alternative to layoffs.

As described in DOL [TEGL 30-09](#), significant benefits accrue to workers, employers, taxpayers, and communities when layoffs are averted:

- For workers, the loss of income and benefits associated with unemployment can be financially devastating. Retaining the same position or transitioning to a different position with retooled skills at a comparable wage maintains financial stability compared to the loss of income sustained when drawing unemployment compensation, which on average is 36 percent of the worker's average weekly wage when employed.
- For employers, retaining a known reliable worker can save costs associated with severance; costs associated with having unfilled, vacant job openings; costs associated with recruiting and orienting a new employee with requisite skills to the procedures, culture and systems of the company that the former worker already knew; and intangible costs such as avoiding lower overall company morale for remaining workers when their co-workers are laid off. Additionally, layoffs often lead to increases in that employer's unemployment compensation tax rates.
- For taxpayers, averting layoffs saves outlays from unemployment trust funds and other taxpayer-funded services that the unemployed worker may draw.
- For communities, averting layoffs is far less disruptive and costly compared to providing emergency food and health services to financially strained families, and the loss of property taxes associated with high home foreclosure rates. It also facilitates the maintenance of overall community economic wellness, which can be threatened when a mass layoff creates tertiary layoffs due to reduced overall consumption in the community.

Rapid Response-Related Terms and Resources

Layoff Aversion - The process of using a series of activities, studies, and networks to examine a business or sector's cycle, logistics, organizational condition, markets, and broad community relationships, in an effort to determine a series of workforce interventions that can mitigate short or long-term job loss, or save jobs altogether.

Incumbent Worker - An employee of the business applying for IWT funds in accordance with WIA.

Incumbent Worker Training - Developed with an employer or employer association to upgrade skills of a particular workforce. The employer agrees to retain the trained worker(s) upon completion of the training. Frequently, such training is part of an economic development or layoff aversion strategy.

Jobs Saved - A layoff is averted when: 1) a worker's job is saved with an existing employer that is at risk of downsizing or closing; or 2) when a worker at risk of dislocation transitions to a different job with the same employer or a new job with a different employer and experiences short term or no unemployment. To be considered as a job saved, the maximum period of unemployment shall not exceed 1 week. This definition is based on the California Unemployment Insurance Code Section 1253. See DOL [TEGL 30-09](#).

Employer Contact (Rapid Response 121 Report) - A visit to an employer by staff for the purposes of conducting Rapid Response activities. This visit may be in person, by telephone or through the use of other interactive technology.

Employer Contact (Layoff Aversion 122 Report) - This may be an onsite or telephonic (conference call, online chat, Skype, etc.) engagement with a representative of the employer that is involved with the development of strategies or in a policy making position within the business contacted. The content of the discussion must include well-being of the business, training needs, etc. to determine how the local area may provide the range of available business service interventions and/or referrals.

Business Cycle - A business cycle is identified as a sequence of four phases:

- Contraction: A slowdown in the pace of economic activity
- Trough: The lower turning point of a business cycle, where a contraction turns into an expansion
- Expansion: A speedup in the pace of economic activity
- Peak: The upper turning of a business cycle

[Work Sharing Program](#) - Work Sharing is described in [Section 1279.5](#) of the California Unemployment Insurance Code and provides employers with an alternative to layoffs and provides their employees with the payment of reduced unemployment insurance benefits.

[Manufacturing Extension Partnership \(MEP\)](#) - The National Institute of Standards and Technology's (NIST) Hollings MEP works with small and mid-sized U.S. manufacturers to help them create and retain jobs, increase profits, and save time and money. The nationwide network provides a variety of services, from innovation strategies to process improvements to green manufacturing. The MEP also works with partners at the state and federal levels on programs that put manufacturers in position to develop new customers, expand into new markets and create new products.

[Employment Training Panel \(ETP\)](#) - The ETP provides funding to employers to assist in upgrading the skills of their workers through training that leads to good paying, long-term jobs. The ETP is a funding agency, not a training agency. Businesses determine

their own training needs and how to provide training. ETP staff is available to assist in applying for funds and other aspects of participation.

Economic Development - There are probably as many definitions for economic development as there are people who practice it. The [International Economic Development Council](#) defines economic development as a program, group of policies, or activity that seeks to improve the economic well-being and quality of life for a community, by creating and/or retaining jobs that facilitate growth and provide a stable tax base. For a good resource, see the [California Association of Local Economic Development](#).

[Small Business Development Centers of California \(SBDC\)](#) – The SBDC model is simple: (1) provide training to small business owners and aspiring entrepreneurs, and (2) provide high quality, no-cost one-on-one counseling to help small business and entrepreneurs overcome obstacles to growth. Topics range from: start-up assistance, planning for growth and expansion, technology and innovation, and perhaps most important, access to capital. California has a long history of launching entrepreneurial start-ups, and the California SBDC program has played an important role in that history.

POLICY AND PROCEDURES:

On May 18, 2004, the State Board adopted a Dislocated Worker 25 Percent funding policy, which includes the following components and related recommendations:

Dislocated Worker 25 Percent Set-aside

State Board policy specifies that the State will set aside 25 percent of the State's WIA Dislocated Worker funding for California's Rapid Response System and for Additional Assistance to dislocated workers in local areas. Of this 25 percent, one-half (12.5 percent) is reserved for Rapid Response activities and one-half (12.5 percent) is reserved for Additional Assistance to local areas.

1. Rapid Response Funding

The Rapid Response set-aside funds will be distributed based on a three-part formula and layoff aversion component as described below:

- **Formula Allocation:**

- Baseline funding allocated equally among local areas to ensure, at a minimum, that some capacity exists in each local area for the coordination and conduct of Rapid Response activities. Allocations to local areas comprised of more than one county will include an additional allocation of \$50,000 for each additional county. Of the Rapid Response set-aside funds, 30 percent will be reserved for this baseline funding
- Layoff-based (121 Report) funding for local areas that serve regions where significant numbers of dislocation events occur. This allocation will be based on quantitative layoff data. Funds will be allocated to local areas in proportion to the number of affected workers offered Rapid Response services in response to layoffs reported to the State. This methodology will

ensure California meets WIA requirements to provide services to assist groups of workers affected by mass layoffs, permanent business closures, and natural or other disasters. Of the Rapid Response set-aside funds, 45 percent will be reserved for this layoff-based funding.

- Hold-Harmless minimizes funding losses from year-to-year. A portion of the Rapid Response set-aside funds will be used to ensure that no local area receives less than 75 percent of their prior-year share of statewide funds distributed for baseline and layoff-based activities. This policy also limits any local area's year-over funding increase to 100 percent of their prior-year allocation. The 25 percent balance of the Rapid Response set-aside funds will first be allocated to uphold the hold harmless provision, and the remaining balance will go toward Layoff Aversion (122 Report) funding.

- **Layoff Aversion (122 Report) funding:**

Funding for these activities will be from the previously State held Rapid Response Competitive Solicitation Fund and will be distributed to local areas for PY 2014-15, based on the local area's relative share of the PY 2014-15 Rapid Response formula allocations. For PY 2015-16 forward, this funding will be distributed to local areas based on each local areas' proportionate share of the total number of jobs saved annually and reported on the Layoff Aversion 122 Report.

2. Additional Assistance Funding

These funds will continue to be available to local areas as currently outlined in Workforce Services Directive [WSD13-2](#), Dislocated Worker Additional Assistance Projects. A future policy directive will be issued to separate Additional Assistance from Rapid Response guidance and clarify the policy and procedures for local areas to request and use these funds.

Uses of Rapid Response 25 Percent Funds

Attachment 1 describes the required and allowable uses of Rapid Response funds. The State has expanded the list of activities local areas may fund with formula-allocated Rapid Response dollars to include employer outreach and job development activities authorized by WIA Regulations at Title 20 CFR Section 667.262(b). These alternative uses of Rapid Response funds for allowable activities, including those covered by Section 667.262(b), do not mitigate the fact that it is the State's policy priority that the full scope of required Rapid Response activities, as described in Section 665.310, must be provided in each local area.

The scope of services that may be provided at Rapid Response events is not restricted to the activities described in WIA Regulations Sections 665.310, 665.320, and 667.262(b) (though only costs of activities described there may be charged to the Rapid Response account). Local boards are encouraged to leverage other local funding sources to provide a broader scope of services. Local boards are encouraged to provide and arrange for providing many other services for the affected workers. Examples include assisting with Trade Adjustment Assistance, unemployment insurance claim filing, economic development, financial assistance counseling, and mental health counseling.

Workforce Services Directive [WSD13-8](#), WIA Statewide Waivers and State Plan PY 2013-17, includes information regarding the DOL approved waivers that provide additional tools and flexibility to local Rapid Response practitioners to address the needs of employers and their employees (e.g., IWT, On-the-Job Training, Work Sharing Program, etc.).

REPORTING:

Baseline, layoff-based, and hold-harmless Rapid Response funds will continue to be issued to each local board, in the master subgrant, as Grant Codes 540 and 541. These formula funds may be spent on the wide range of required and/or allowable activities. Local boards shall continue to report participant enrollments receiving IWT using Rapid Response formula funds under Grant Code 274.

Layoff Aversion (122 Report) funding will be issued under Grant Codes 292 and 293 in each local board's master subgrant. These funds are to be spent exclusively on layoff aversion activities (except IWT).

Rapid Response Reporting Requirements (121 Report)

Activities to be included on the Rapid Response 121 Report are those relating to employer contacts in response to layoffs or closures, as defined by the State Board. The Rapid Response 121 Report must be completed to report employer contacts by local area staff when conducting layoff/closure orientations with 10 or more affected workers **ONLY**, and/or layoff/closure planning meetings. Planning meetings are for information only and will not be used in the calculation of the dislocation-based formula funding factor.

Complete a separate line item entry for each employer contact occurring on different days, locations, or employers. Complete a single line item entry if multiple sessions are conducted on the same day, for a single employer with the note of how many multiple orientations were made that day.

The Rapid Response 121 Report and line item instructions are included as Attachments 2 and 3. The Rapid Response 121 Report must be completed quarterly and submitted via e-mail by the 20th of the month following the quarter's end to the local area's assigned Regional Advisor, with a "cc" to the local area administrator.

Layoff Aversion Reporting Requirements (122 Report)

This is a new report, specifically developed to capture and report layoff aversion activities and jobs saved resulting from those activities. A Layoff Aversion 122 Report may include a "single" job saved at an individual employer. Activities reported are those relating to employer contacts when an activity or resource is introduced, planned, or involves follow-up or wrap-up of a prior activity. It is important that local area staff consider and document how layoff aversion activities will result in a positive outcome before allocating resources.

For completion of the layoff aversion activity, documentation of outcomes must be retained for audit purposes. Please note that the local board's administrative, fiscal, and program activities will be subject to the State's monitoring processes.

The Layoff Aversion 122 Report and line item instructions are included as Attachments 4 and 5. The Layoff Aversion 122 Report must be completed quarterly and submitted via e-mail by the 20th of the month following the quarter's end to the local area's assigned Regional Advisor, with a "cc" to the local area administrator.

ACTION:

Bring this directive to the attention of all relevant parties.

INQUIRIES:

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

/S/ JOSÉ LUIS MÁRQUEZ, Chief
Workforce Services Division

Attachments are available on the Internet:

1. [List of Required and Allowable Rapid Response Activities](#) (PDF)
2. [Rapid Response 121 Report](#) (XLS)
3. [Rapid Response 121 Report Line Item Instructions](#) (PDF)
4. [Layoff Aversion 122 Activity Report](#) (XLS)
5. [Layoff Aversion 122 Activity Report Line Item Instructions](#) (PDF)
6. [Examples of Categorization of Rapid Response Activities](#) (PDF)
7. [Summary of Comments](#) (PDF)