ATTACHMENT 3

Summary of Comments and Resolutions of Comments Regarding Directive "Dislocated Worker Additional Assistance Projects"

There were nine respondents to the Draft version of this Directive.

Commenter #1 expressed concern, based on his experience, that recipients of Additional Assistance funds claim, in instances when closures/layoffs that were the basis of an award did not eventuate as expected, that the language of the original Directive and the Draft Directive allow funds to be redirected to unrelated closures/layoffs via a Project Amendment because such a redirection merely constitutes an allowable change in "target population." He indicated that he feels this is inappropriate.

Resolution: The following sentence has been added to the Directive: "Redirection of approved Additional Assistance funds to address dislocation events where closures/layoffs that formed the basis for the original award did not eventuate, cannot be accomplished via Project Amendments. A new application must be submitted."

Commenter #2 expressed concern that the original Directive and the Draft Directive do not use the "WIA Supplemental Budget Form" to provide specified detail about planned Contractual Services/Training. She based her concern on her experience that applicants for Additional Assistance funding typically fail to provide this information even though the Budget form requires applicants to "attach detailed description."

Resolution: We have inserted the part of the "WIA Supplemental Budget Form" which deals with contractual services into the Narrative part of the application. We have also added a footnote to Section IV specifying "All contractual services must be competitively procured in accordance with federal and state procurement regulations and policies. See WIA Directive WIAD00-2." We have added to the Application Guidelines: "All providers of services other than the subgrantee and any bona fide co-applicant(s) must be selected via a competitive procurement process. Identification of service providers in a State-approved application does not constitute State permission to forego competitive procurement."

Commenter #3 had numerous suggestions. She recommended a rewriting of the question in Section III relating to non-supplantation of TAA resources, deletion of the chart on page 4 of the application that relates to availability of other Dislocated Worker funds, addition of "employers" to the question in Section IV relating to the involvement of organized labor in the project, and clarification that applicants must demonstrate that partner entities which are claimed to be "co-applicants" really are "co-applicants" before they can be exempted from the requirement that all contractual services must be competitively procured.

Resolution: Regarding non-supplantation of TAA resources, the third question in Section III has been modified to read as follows:

Is Trade Adjustment Assistance (TAA) available?

Yes ☐ *describe how Additional Assistance is linked with TAA to ensure it does not supplant TAA.*

No ☐ ***but if TAA becomes available the applicant certifies it will ensure Additional Assistance funds are not used to supplant TAA resources***

While the commenter is correct in pointing out that the State should know the pattern of expenditure and availability of Dislocated Worker funds in each local area, LWIAs can reasonably be expected to present the status of their funds when they submit a funding request. We have added "employers" to Section IV. Regarding "co-applicants" the following words have been added to the Application Guidelines: "In the event that a funding application is submitted jointly by co-applicants (two or more LWIAs, LWIA[s] and other entity[ies], or other entities) the lead entity must submit a detailed description in the application that explains which one of the co-applicants will act as the grant recipient and that provides persuasive evidence that the other co-applicant(s) is/are bona fide co-applicant(s), not a subrecipient(s)."

Commenter #4 stated that the Workgroup which created the new allocation formula understood that while it is an improvement over the preceding formula it still is "flawed in its ability to appropriately and equitably distribute the Dislocated Worker funding across the diverse economies of California." He provided an extended excerpt from expert testimony to the Workgroup indicating that "unemployment rate(s) and UI (Unemployment Insurance) claims are less and less reliable as an indicator of dislocated worker need . . . ." He also indicated that the requirement to demonstrate an increase in the number of UI claimants could be a "red herring" because the base number of UI claimants often is so large that multiple closures and even big closures don't result in a measurable increase. He listed other interfering factors (which were also listed in the expert testimony excerpt): Lag between job loss and enrollment in WIA, job search occurring where the previous job was not near the place of residence, many dislocated workers not filing UI claims, applicants not contacting WIA until they have exhausted their UI claims, and workers taking "survival" jobs rather than filing for UI. The requirement in the Draft Directive for applicants to provide evidence that the number of UI claimants has risen or will soon rise was questioned. The excerpt from expert testimony also indicated problems with the Long Term Unemployed factor that is used in California's Dislocated Worker funding allocation formula. For all these reasons, the commenter indicated, it is inappropriate to limit applications for Additional Assistance funding to those that are based on "increases in worker dislocation activities over the prior year's experience" and that applications which are based on "justification and supporting documentation (alleging) that the formula funds are not sufficient to address the worker dislocations that are occurring" should continue to be accepted. He said

"(t)o what(ever) degree a LWIA can demonstrate that the worker dislocation that is occurring in its region surpasses the incidence reflected in the unemployment claimant-based model, an application for supplemental WIA 25 percent funding should carry the same priority for review and funding as when a plant closure (anticipated or not) increases the number of UI claimants." He summarized his position by saying that ". . . the policy for applying for Additional Assistance funds should remain open-ended, basically answering the questions of: Why do you need more funds? Why are your allocated funds insufficient to meet the projected need? How can the answer to these two questions be demonstrated and/or documented?" He stated that it is correct for the State to expect applicants to "clearly demonstrate that carry forward and current adult and Dislocated Worker funds are insufficient to address the needs of dislocated workers in the local area" and stated that this should be allowed "regardless of the cause or nature of the dislocation."

The commenter went on to remind the State that the Workgroup determined that Additional Assistance funds should not be used to pay for "hold harmless" in respect to the allocated Dislocated Worker (60 percent) funding stream. He said that "(t)he implementation of the hold harmless concept should not preclude additional assistance funding being available to LWIAs that can demonstrate an amount of worker dislocation that is/will be occurring that is disproportionate to the percentage of funds allocated to that LWIA."

He also stated that non-LWIAs should not be eligible to apply for Additional Assistance, that the review/approval process should be expedited and should include a meeting to explain where the application is in the process and what "speed bumps" are anticipated, and that there should be an optional grant period of 18 months.

Resolution: These comments were reviewed against the background of the EDD management's direction based on the allocation formula workgroup's position that "Additional Assistance funds should not be used to balance inequities in the formula (for allocation of Dislocated Worker funds), but should instead be tied to actual layoff events and need emerging during the program year." We understand this statement to mean that the EDD management knows that the new formula is not perfect but that management nevertheless wants Additional Assistance funds to be used to respond to new dislocation events and layoffs as they happen.

Against that background, the commenter's objections to the deletion of "formula insufficiency" as a basis for Additional Assistance funding are insufficient to modify the EDD management's direction about targeting Additional Assistance funds to responses to new dislocation events and layoffs as they happen. His discussion about the flawed nature of the new formula is irrelevant because the EDD management's decision indicated awareness of remaining flaws in the allocation formula. The commenter's arguments could actually be read to

support the EDD management's decision to focus Additional Assistance awards on addressing new dislocation events and layoffs as they happen. He argues that deletion of "formula insufficiency" would prevent applications presenting "justification and supporting documentation [alleging] that the formula funds are not sufficient to address the worker dislocations that are occurring". However, "worker dislocations that are occurring" sounds like new things that are happening and those would be an eligible basis for requesting Additional Assistance funds without needing to allege "formula insufficiency." The commenter does not present persuasive reasons why the EDD management-level decision to eliminate the "formula insufficiency" basis of Additional Assistance funding should be overturned.

The commenter provided persuasive evidence regarding the inappropriateness of UI claimant information to making Additional Assistance decisions and we have deleted the requirement for applicants to present evidence that the number of UI claimants has or will rise. The suggested addition to the Directive regarding 60 percent hold harmless is not necessary. It is fully established that no Additional Assistance funds will be used to accomplish hold harmless in the 60 percent program. We have deleted the option for non-LWIAs to apply for Additional Assistance funds because there should never be a reason for a non-LWIA to receive Dislocated Worker funds that supplement funds previously awarded to the relevant LWIA. We will not edit the Directive to add a statement regarding expediting the review/approval process because a mere statement in the directive would not influence what is already a very dedicated effort by many people to process applications as quickly as possible. We have added language that allows projects to run for up to 18 months if applied for and shown to be necessary.

Commenter #5, Commenter #6, and Commenter #7 submitted three essentially identical letters. They are summarized below.

These commenters did not object to the State's deletion of "formula insufficiency" as a basis of applying for Additional Assistance. They did say that the explanation on page 2 of Attachment 1 of the State's decision to delete "formula insufficiency" is a "sweeping pronouncement" that is "too vague . . . to serve any meaningful purpose." They recommended that it be dropped and replaced by policy clarifications that Additional Assistance funds 1) will not be used to accomplish hold harmless in the 60 percent program and 2) will not be taken "off-the-top" and directly awarded to LWIAs to mitigate funding shortfalls. They said that the needs of dislocated workers and the timing of the proposed solution should be left to the applicants for Additional Assistance funding to identify.

They said that the requirement for applicants to provide evidence of increased numbers of UI recipients "is completely inappropriate and should be excluded entirely." They indicated that they feel this requirement implies that only UI claimants are eligible for Dislocated Worker services. They also contended that

this requirement implies that there is some infallibility in the new, UI claimants-based formula even though the committee agreed it is an improvement but is not perfect.

They contended that only LWIAs should be eligible to apply for Additional Assistance funding because it is not possible for any entity but a LWIA to demonstrate that regular Dislocated Workers funds that are available at the local level are in fact insufficient to address the needs of dislocated workers in the local area.

They requested that a State commitment be added to the Directive to communicate the status of its review of applications and to make funding decisions promptly.

Finally, they said the directive should state that "it is the State's policy and commitment to immediately and aggressively seek additional funding from other sources, including the Department of Labor." The basis of this request is their perception that "it is de facto State policy to harbor resources – both State and local – with the goal not to run out of money by the end of the year." They indicated that "(t)his is too cautious" and that "it is preferable that the State respond to need and seek additional funding."

Resolution: We have retained the paragraph that states why we deleted "formula insufficiency" as a basis for applying for Additional Assistance. It is clear, and explicit. It is necessary for understanding of the basic reason why we are modifying this directive.

There is no need to incorporate a prohibition on using Additional Assistance funds to accomplish "hold harmless" in the 60 percent Dislocated Worker allocation process as that process has its own, incorporated "hold harmless" provision.

Narrative has been added to explain that Additional Assistance funds will not be taken "off-the-top" and directly awarded to LWIAs to mitigate funding shortfalls.

The requirement for applicants to demonstrate a rise or upcoming rise in the number of UI claimants has been deleted.

Eligibility to apply for Additional Assistance funds has been restricted to LWIAs.

The State will not provide a commitment to routinely communicate the status of our review of applications. Since applicants are the "moving party" it is their responsibility to inquire about the status of their applications, which they can do at any time.

There is no State policy to disapprove applications that show genuine need in order to husband Additional Assistance resources. However, the commenters' suggestion is based on some key misunderstandings about the State's ability to secure additional funds: The only real source is the Department of Labor's National Emergency Grant. Its guidelines preclude award of any funds until the statewide level of Dislocated Workers funds obligation/expenditure reaches 70 percent and requires the identification of "eligible events" for which funding is provided.

Commenter #6 provided an additional comment in her e-mail transmittal of her letter. She indicated that it should be possible to request Additional Assistance funds to proactively prepare for impending problems (such as layoffs in residential building) and to do layoff aversion.

Resolution: Use of Additional Assistance funds to prepare for impending problems and layoff aversion has not been authorized as the State annually allocates Rapid Response funds to all LWIAs to help them address impending problems and to do layoff aversion.

Commenter #8 indicated that he had received a number of complaints/comments and that the chief concern is the increased information called for, some of which is considered completely irrelevant. The example provided in his submission and in the follow-up phone conversation was that the State should not require information about increased UI claimant totals. He said, the EDD is in a better position to generate that information and, if there is a "real" plant closure or layoff, the answer to this question is not necessary.

Resolution: The question that requires submission of information about increased, or pending increases of, numbers of UI claimants has been deleted.

Commenter #9 indicated that the basis of Additional Assistance should be whether funds are insufficient in an LWIA. The State's funding strategy should be to maximize a LWIA's ability to respond to local needs, rather than to impede it. If the State's Additional Assistance funds are insufficient, it should seek additional funds from the Department of Labor. The funding formula does not provide sufficient funding to meet anticipated need. It is "woefully inadequate" and inevitably will need to be supplemented in respect to "just about any plant closure." It merely seeks to more equitably distribute Dislocated Worker funds. The State should find ways to speed up and simplify the Additional Assistance process. UI rates should not be used as a measure of need for Additional Assistance, also because proving there has been a change in the UI rate would take a lot of time.

Resolution: This commenter did not provide a systematic rationale opposing deletion of "formula insufficiency" as a basis for requesting Additional Assistance funding. Therefore, that change is not rescinded. As indicated in the response to

Commenters #5, #6, and #7, the State's ability to secure National Emergency Grant funds from the Department of Labor is limited. As indicated in response to Commenter #4, the State already uses a very dedicated effort by many people to process applications as quickly as possible. As indicated in the response to Commenter #4, the requirement to demonstrate that UI rates have or will rise has been deleted.