

**DIRECTIVE**  
WORKFORCE SERVICES

Number: WSD11-11

Date: June 8, 2012

69:52:ab:14291

TO: WORKFORCE DEVELOPMENT COMMUNITY

SUBJECT: CONTRACTS WITH HIGHER EDUCATION OR ELIGIBLE TRAINING PROVIDERS

**EXECUTIVE SUMMARY:**

**Purpose:**

The purpose of this directive is to provide guidance regarding Local Workforce Investment Boards (local board) contracting directly with institutions of higher education or eligible training providers.

**Scope:**

This directive applies to all California local boards.

**Effective Date:**

This directive is effective on the date of its issuance.

**REFERENCES:**

- Workforce Investment Act (WIA) Sections 122, 123, 129(c), and 134(d)(4)(D)
- American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5)
- Consolidated Appropriations Act, 2012, Division F (Public Law 112-74)
- Full-Year Continuing Appropriations Act, 2011, Division B (Public Law 112-10)
- Consolidated Appropriations Act, 2010, Division D (Public Law 111-117)
- Title 20 United States Code (USC) Sections 1001-1002
- One-Stop Comprehensive Financial Management Technical Assistance Guide
- Department of Labor (DOL) Training and Employment Guidance Letter (TEGL) 26-10, WIA Adult, Dislocated Worker and Youth Activities Program Allotments for Program Year (PY) 2011; Final PY 2011 Allotments for Wagner-Peyser Act Employment Service Program Allotments; and Workforce Information Grants to States allotments for PY 2011. (May 10, 2011)

*The EDD, an equal opportunity employer/program, is a partner in this publication. Auxiliary aids and services are available upon request to individuals with disabilities. Requests for services, aids, and/or alternate formats need to be made by calling (916) 654-8055 (Voice). TTY users, please call the California Relay Service at 711.*

- DOL TEGL 12-09, Joint Guidance for States Seeking to Implement Subsidized Work-Based Training Programs for Unemployed Workers (January 29, 2010)
- DOL TEGL 14-08, Guidance for Implementation of the WIA and Wagner-Peyser Act Funding in the ARRA and State Planning Requirements for PY 2009 (March 18, 2009)
- DOL Employment and Training Administration Website, Implementing WIA and Wagner-Peyser Funding under ARRA, [www.doleta.gov/recovery/TEGL14-08\\_Change1\\_FAQs.cfm](http://www.doleta.gov/recovery/TEGL14-08_Change1_FAQs.cfm)
- Workforce Services Directive WSD09-8, WIA Job Training Automation (JTA) System Client Forms Handbook (February 11, 2010)
- WIA Directive WIAD06-15, Subject: Eligible Training Provider List (ETPL) (February 7, 2007)
- WIA Directive WIAD04-4, Subject: Recovery of WIA Tuition and Training Refunds (August 18, 2004)
- WIA Directive WIAD00-2, Subject: Procurement (August 24, 2000)

**STATE-IMPOSED REQUIREMENTS:**

This document contains no State-imposed requirements.

**FILING INSTRUCTIONS:**

This directive finalizes Workforce Services Draft Directive WSDD-53, issued for comment on February 8, 2011. The Workforce Services Division received four comments during the draft comment period. These comments resulted in two substantive 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 an attachment to this directive. Retain this directive until further notice.

(Note: The Full-Year Continuing Appropriations Act, 2011, and Continuing Appropriations Act, 2012, were signed during this directive's comment and revision period. This resulted in further substantive changes to the directive which can be viewed as highlighted text at the top of page four. Additionally, instructions for institutions of higher education not on the ETPL to record training activities in JTA were added to the directive. This information can be viewed as highlighted text on page five.)

**BACKGROUND:**

In order to increase the availability of training to workforce investment system customers, the Consolidated Appropriations Act, 2010 provides local boards the flexibility to contract directly with institutions of higher education or eligible training providers under certain conditions. Specifically, the Consolidated Appropriations Act, 2010 states, "a local board may award a contract to an institution of higher education or other eligible training provider if the local board determines that it would facilitate the

training of multiple individuals in high-demand occupations, if such contract does not limit customer choice.” Section 1104 of the Full-Year Continuing Appropriations Act, 2011 states that unless otherwise specified, the requirements, conditions, limitations and authorities in the Consolidated Appropriations Act, 2010, continue to be in effect for PY 2011. The Consolidated Appropriations Act, 2012 provides the same flexibility.

The above-mentioned flexibility was also a provision of ARRA and is intended to increase education, training enrollments, and training capacity at a time when many states and educational institutions are experiencing budget shortfalls. Direct contracts with institutions of higher learning or eligible training providers allow local boards to quickly design training to fit the needs of both job seekers and employers.

## **POLICY AND PROCEDURES:**

### Definitions

The term "institution of higher education" means an educational institution that:

- admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;
- is legally authorized within such State to provide a program of education beyond secondary education;
- provides an educational program for which the institution awards a bachelor's degree or provides not less than a two-year program that is acceptable for full credit toward such a degree;
- is a public or other nonprofit institution (including private nonprofit institutions); and
- is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary for the granting of preaccreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time [20 USC 1001 subsection (a)].

The institution of higher education term also includes:

- additional institutions [20 USC 1001 subsection (b)].
- a proprietary institution of higher education [20 USC 1002 subsection (b)].
- a postsecondary vocational institution [20 USC 1002 subsection (c)].

The term "eligible training providers" refers to training providers listed on the State's ETPL (See WIA Directive WIAD06-15, Eligible Training Provider List).

## Contract Provisions

Local boards may use adult, dislocated worker, and youth formula funds to award contracts to institutions of higher education or eligible training providers, under the following conditions:

- the local board determines it would facilitate the training of multiple individuals in high-demand occupations, and
- the contracts do not limit customer choice

This flexibility applies to PY 2010-11, PY 2011-12, and PY 2012-13 funds, and is applicable throughout the life of the funds (e.g., July 1, 2010 through June 30, 2012 for PY 2010-11 funds).

Local boards must comply with applicable federal and State procurement regulations and policies prior to awarding contracts to institutions of higher education or eligible training providers (See WIA Directive WIAD00-2, Procurement). Therefore, local boards must conduct procurements in a manner designed to provide full and open competition. Thus, if a local board determines a sole source procurement to be appropriate, they must meet the requirements of noncompetitive proposals as stated in the [One-Stop Comprehensive Financial Management Technical Assistance Guide](#), Chapter II-10, Procurement. Additionally, local boards must ensure contracts identify training providers as either vendors or subrecipients consistent with the guidance provided in the One-Stop Comprehensive Financial Management Technical Assistance Guide, Appendix E.

Local boards may pay for the full cost of training at the beginning of the course. However, local boards must ensure they have policies and procedures in place to recover unused WIA training monies and/or tuition refunds as required in WIA Directive WIAD04-4, Recovery of WIA Tuition and Training Refunds. Additionally, any classroom training purchased with youth formula funds must meet the youth program design parameters established in WIA Section 129(c).

Institutions of higher education, such as community colleges, do not need to be on the State's ETPL in order to be awarded a contract. Other providers of training that are not institutions of higher education must be on the ETPL in order to be awarded a contract.

Training services include the full range of occupational skills training, adult education and literacy services, and customized training as described in WIA Section 134(d)(4)(D). Before entering into such contracts, local boards should assess current training offerings to ensure that the contracts are not duplicating existing training courses and curricula. These training contracts can be performance-based to ensure that they result in real outcomes for the students.

As part of the contract, the institution of higher education or eligible training provider could develop curriculum for emerging sectors and enhance the capacity of the institutions to ensure quality training within limited timeframes. As such, the development of curriculum by institutions of higher education can be considered a

# ~ I N A C T I V E 6/26/13 ~

training activity under WIA, if it is developed in the context of providing training to WIA participants. Curriculum activities should focus on adapting existing or creating new curriculum that will result in a short-term increase in training capacity, rather than long-term curriculum development activities.

## Recording Training Activities in JTA for Institutions of Higher Education not on the ETPL

When institutions of higher education, such as community colleges, are placed on the ETPL, they are assigned a State Provider ID and each program offered by the institution is assigned a State Program ID. Institutions of higher education contracting directly with local boards are not required to be on the ETPL and therefore will not have State Provider/Program IDs. To accommodate these training providers, a new enrollment activity code has been created in the JTA system. Activity code #66 has been established to enroll participants in occupational skills training programs, Adult Education and literacy services, and customized training at institutions of higher education that have contracted directly with a local board. This activity code should only be used for participants enrolled at institutions of higher education in training programs that are not on the ETPL.

### **ACTION:**

Please bring this directive to the attention of the local board and other relevant parties.

### **INQUIRIES:**

If you have questions concerning this directive, contact your assigned [Regional Advisor](#).

/S/ MICHAEL EVASHENK, Chief  
Workforce Services Division

Attachment

### Summary of Comments

#### Draft Directive “Contracts with Higher Education or Eligible Training Providers”

There were four commenters to the draft version of this directive:

Commenter #1: inquired whether adult education providers must be under the purview of the community college system in order for Local Workforce Investment Boards (local board) to contract with them.

Resolution: Local boards may contract with adult education providers as long as they meet the definition of an institution of higher education or eligible training provider as specified in this directive. Accordingly, adult education providers do not need to be under the purview of the community college system.

Commenter #2: inquired whether this directive applies to the Regional Occupational Program (ROP).

Resolution: No, the ROP is not an institution of higher education or eligible training provider. Therefore, local boards cannot contract with ROP under this directive.

Commenter #3: stated that the first bullet of the definition of an institution of higher education, “admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate,” would exclude community colleges if they admit students who lack these certificates or recognized equivalents. The commenter requested that the Employment Development Department (EDD) clarify this issue in the directive.

Resolution: Title 20 United States Code Section 1001 subsection (b) provides that the term institution of higher education includes public or nonprofit private educational institutions that admit students that don’t possess a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate if they are beyond the age of compulsory school attendance or will be dually or concurrently enrolled in the institution and a secondary school. The EDD expanded the definition of institution of higher education on page three of the directive to include this subsection.

Commenter #4: inquired whether the fourth bullet of the definition of an institution of higher education, “is a public or other nonprofit institution,” includes private universities, such as the University of the Pacific (UOP) or Stanford.

Resolution: Private nonprofit schools like Stanford are included in the definition. The EDD clarified this by adding “including private nonprofit institutions” to the fourth bullet on page three of the directive. The difference between a private nonprofit institution (e.g., Stanford or UOP) and a private for-profit institution (e.g., University of Phoenix) is that any leftover revenue from a private nonprofit is reinvested in the school to increase the quality and service to students. The excess revenue from a private for-profit is paid out to shareholders.