

DIRECTIVE
WORKFORCE SERVICES

Number: WSD12-13

Date: March 26, 2013

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TO: WORKFORCE DEVELOPMENT COMMUNITY

SUBJECT: TEMPORARY EXTENSION OF WIA STATEWIDE WAIVERS AND
STATE PLAN

EXECUTIVE SUMMARY:

Purpose:

The purpose of this directive is to convey the policy and procedural information pertaining to the extension of 11 statewide waivers granted to the State of California under the Workforce Investment Act (WIA) of 1998. Additionally, it announces the extension of the State's WIA/Wagner-Peyser Strategic Plan. Both the waivers and the State Plan have been extended through June 30, 2013.

Scope:

This directive applies to all Local Workforce Investment Areas (local area) and all other recipients of WIA funds.

Effective Date:

This directive is effective upon release.

REFERENCES:

- WIA Sections 101(8)(C), 101(31)(B), 122(c), 129(b)(2)(C), 129(c)(2), 133(b)(4), 134(a)(1)(A), 134(a)(2)(B)(ii), 134(a)(2)(B)(iii), 134(a)(3)(A)(iv), 134(d)(4)(E), 136(b) and 189(i)(4)
- Title 20 Code of Federal Regulations (CFR) Sections 661.420, 663.530, 664.510, 665.200(d), 665.200(e), 665.200(h), and 667.140
- Department of Labor (DOL) Training and Employment Guidance Letter (TEGL) 21-11, Requirements for 2012 State Workforce Plans (March 27, 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)

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- DOL TEGL 26-09, WIA Waiver Policy and Waiver Decisions for Program Year (PY) 2009 and 2010 (May 12, 2010)
- DOL TEGL 17-05, Common Measures Policy for the Employment and Training Administration's Performance Accountability System and Related Performance Issues (February 17, 2006)
- California Strategic Workforce Development Plan (Draft State Plan) for PY 2012-2017 (Draft 2012-13)
- Workforce Services Directive WSD12-6, Transfer of Funds for WIA Adult and Dislocated Worker Programs (August 15, 2012)
- WIA Directive WIAD06-15, Eligible Training Provider List (ETPL) (February 7, 2007)

STATE-IMPOSED REQUIREMENTS:

This directive contains some State-imposed requirements. These requirements are indicated by ***bold, italic*** type.

FILING INSTRUCTIONS:

This directive supersedes Workforce Services Directive WSD12-5, dated August 15, 2012, and finalizes Workforce Services Draft Directive WSDD-78, issued for comment on December 28, 2012. There were no comments received during the draft comment period. Retain this directive until further notice.

BACKGROUND:

In order to meet current and future challenges facing the workforce system and respond to legislation enacted by Governor Brown, the California Workforce Investment Board (CWIB) initiated a comprehensive review and realignment of California's WIA/Wagner-Peyser Five-Year Strategic Plan. For the proposed five-year strategic plan, the CWIB requested and received an extension of 11 existing waivers, through June 30, 2013.

The 11 existing waivers are as follows:

- The waiver of WIA Section 133(b)(4) to increase the allowable transfer amount between adult and dislocated worker funding streams allocated to a local area.
- The waiver to permit the State to replace the performance measures at WIA Section 136(b) with the common measures.
- The waiver of the required 50 percent employer contribution for customized training at WIA Section 101(8)(C).
- The waiver of the time limit on the period of initial eligibility of training providers at WIA Section 122(c).
- The waiver of WIA Section 134(a) to permit local areas to use a portion of local funds for IWT.

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- The waiver of WIA Section 134(a)(1)(A) to permit a portion of the funds reserved for rapid response activities to be used for IWT.
- The waiver of WIA Section 101(31)(B) to increase the employer reimbursement for on-the-job training.
- The waiver of the prohibition to use Individual Training Accounts (ITA) for older and out-of-school youth at Title 20 CFR 664.510.
- The waiver of WIA Section 129(b)(2)(C) to provide additional assistance to local areas that have a high concentration of eligible youth.
- The waiver of the requirement to conduct evaluations of workforce investment activities for adults, dislocated workers and youth to establish and promote continuous improvement of the statewide workforce investment system at WIA Section 134(a)(2)(B)(ii).
- The waiver of the requirement to provide incentive grants to local workforce investment areas to reward regional cooperation, local coordination of activities, and exemplary performance at WIA Section 134(a)(2)(B)(iii).

POLICY AND PROCEDURES:

Transfer of Adult and Dislocated Worker Formula Funds

The DOL granted California an extension of the waiver to permit an increase of the funds transfer limitation at WIA Section 133(b)(4). This waiver is granted through June 30, 2013. Under this waiver, local boards may transfer up to 50 percent of the adult funds and up to 50 percent of the dislocated worker funds allocated to the local area between the adult and dislocated worker funding streams. This transfer limit provides the local areas flexibility while ensuring consistency with the Congressional intent regarding the level of funding appropriated for WIA adult and dislocated worker programs.

The local areas must submit transfer requests in writing to the appropriate Regional Advisor. For policies and procedures regarding the transfer of funds, please refer to [WSD12-6](#), "Transfer of Funds for WIA Adult and Dislocated Worker Programs."

Common Measures

The DOL granted California an extension of the waiver that allows the State to replace the 17 performance measures under WIA Section 136(b) with the DOL Common Measures. This waiver is granted through June 30, 2013. Under this waiver, the local areas no longer report on the following WIA measures: WIA adult and dislocated worker credential rates; participant and employer customer satisfaction; older youth measures; and younger youth measures. For further information regarding the DOL Common Performance Measures, please refer to [TEGL 17-05](#), "Common Measures Policy for the Employment and Training Administration's Performance Accountability System and Related Performance Issues."

Customized Training

The DOL granted California an extension of the waiver of the required 50 percent employer contribution for customized training at WIA Section 101(8)(C). This waiver is granted through June 30, 2013. This waiver permits the use of a sliding scale for the employer contribution based on the size of the business. Under this waiver, the following sliding scale is permitted: (1) no less than a 10 percent match for employers with 50 or fewer employees; (2) no less than a 25 percent match for employers with 51 – 250 employees; and (3) no less than a 50 percent match for employers with more than 250 employees. No request process is required for local areas to implement the employer match sliding scale.

This waiver provides a valuable tool to local boards in their support of California's small businesses and their employees. The sliding scale for employer match provides the necessary flexibility for small businesses to participate in the WIA customized training program. Accordingly, the intent of this waiver is to encourage greater employer participation which will lead to increased employment rates for skilled job seekers.

Eligibility of Training Providers

The DOL granted California an extension of the waiver that suspends the subsequent eligibility certification requirements of WIA Section 122(c). This waiver is granted through June 30, 2013. Under this waiver, the State is allowed to postpone the determination of subsequent eligibility of training providers. Additionally, this waiver allows the State to provide an opportunity for training providers to re-enroll and be considered enrolled as eligible providers.

This waiver encourages broader participation on the ETPL and minimizes the management burden for the local areas.

Use of Local Funds for Incumbent Worker Training Activities

The DOL granted California an extension of the waiver from the provisions of WIA Section 134(a) to permit local areas to use a portion of local funds for IWT. This waiver is granted through June 30, 2013. Under this waiver, local boards may use up to 10 percent of their adult funds and up to 10 percent of their dislocated worker funds for IWT only as part of a lay-off aversion strategy. Local areas must continue to conduct the required local employment and training activities at WIA Section 134(d). Additionally, local areas are restricted to serving low-income adults with adult funds, and all training delivered is restricted to skill attainment activities.

Notification from local areas that they intend to use up to 10 percent of their PY 2012-13 adult and/or dislocated worker funds for IWT must be received in writing by the Employment Development Department's (EDD) Workforce Services Division Central Office. Requests should be addressed to the local area's Regional Advisor and should be submitted 30 days in advance of the expected start date.

Local areas must track by funding stream the WIA funds used for IWT under this waiver. Any amount used for IWT is to be noted in the "Comments" section of the

appropriate financial report. Please note that the local area's administrative, fiscal, and program activities will be subject to the State's monitoring processes.

For additional policy and guidance related to implementation of this waiver, refer to [TEGL 26-09](#), "WIA Waiver Policy and Waiver Decisions for PY 2009 and 2010," Section 7A, [TEGL 30-09](#), "Layoff Aversion Definition and the Appropriate Use of WIA Funds for IWT for Layoff Aversion Using a Waiver," and the section, "Use of Rapid Response Funds to Conduct IWT Activities," of this directive.

Use of Rapid Response Funds to Conduct Incumbent Worker Training Activities

The DOL granted California an extension of the waiver of WIA Section 134(a)(1)(A) to permit a portion of Rapid Response funds to be used for IWT activities. This waiver is granted through June 30, 2013. Under this waiver, local boards may use up to 20 percent of Rapid Response funds for IWT only as part of a lay-off aversion strategy. All training delivered under this waiver is restricted to skill attainment activities.

In addition to the guidance provided in [TEGL 26-09](#), "WIA Waiver Policy and Waiver Decisions for PY 2009 and 2010," Section 7A and [TEGL 30-09](#), "Layoff Aversion Definition and the Appropriate Use of WIA Funds for Incumbent Worker Training for Layoff Aversion Using a Waiver," local areas may use the following general guidelines and suggestions to document their determination that the provision of IWT was appropriate.

Identification of Employers with the Potential for Lay-offs:

- Referral or contact from local city or county economic development agencies, chambers of commerce, labor organizations, small business development agencies, or other entities.
- Through connection with employers in a proactive and regular manner to identify their business needs.
- Through strong relationships with business management and labor representatives to encourage businesses to approach local areas before lay-offs.
- Use commercial business credit information such as Dun and Bradstreet.
- Identification of rapidly transitioning industries using the EDD Labor Market Information Division (LMID) reports, regional industry sector studies, academic studies, or other credible data information sources.

Identification of Workers in need of Training:

- Use the Worker Adjustment and Retraining Notification Act as a way to identify not only workers currently in need of assistance, but to also identify workers who may need training in a struggling business in the future
- Through regional and local collaborative efforts among local areas, employers, industry organizations, education and training institutions, labor organizations, community advocates, academic institutions, and other partners focused on addressing the workforce challenges of rapidly transitioning industries.

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- Surveys and studies conducted by organizations or intermediaries such as the National Institute of Standards and Technology Manufacturing Extension Partnership may help to identify specific skill sets workers will need in order to remain employed.
- Data from other organizations including chambers of commerce, Small Business Development Centers, labor organizations, and surveys and studies commissioned by local areas.

Identification of Incumbent Worker Training Needs within Industries:

- Identify new or changing regulations that require a change in technology, software, waste reduction, energy conservation, etc.
- Identify changing skill requirements as a result of external economic or market forces, significant changes in operating processes, rapidly changing industry or occupational job requirements or emergence of new products.
- Direct communication with employers or joint labor-management committees such as joint apprenticeship training committees.
- Use of industry recognized skills standards and curriculum.
- Use the EDD LMID or other credible data industry projections to identify industry trends.

Increase in Employer Reimbursement for On-the-Job Training

The DOL granted California a waiver of WIA Section 101(31)(B) to permit an increase in employer reimbursement for on-the-job training through a sliding scale based on the size of the business. This waiver is granted through June 30, 2013. Under this waiver, the following reimbursement amounts are permitted: (1) up to 90 percent for employers with 50 or fewer employees, (2) up to 75 percent for employers with 51 – 250 employees, and (3) up to 50 percent reimbursement for employers with more than 250 employees. Local areas may provide on-the-job training to adults with WIA adult funds, and on-the-job training to dislocated workers with WIA dislocated worker funds. In the event that funds allocated to a local area for adult employment and training activities are limited, priority for intensive and training services funded with adult funds should be used for low-income adults [WIA Section 134 (d)(4)(E)].

This waiver allows the local boards to encourage and expand the hiring of unemployed adult and dislocated workers who lack some of the skills needed to meet an employer's needs.

Individual Training Accounts

The DOL granted California an extension of the waiver of the prohibition at Title 20 CFR 664.510 on the use of ITAs for older and out-of-school youth program participants. This waiver is granted through June 30, 2013. Under this waiver, local areas can use ITAs for older and out-of-school youth program participants. Local areas must ensure that funds used for ITAs are tracked and reflected in the individual service strategies for these youth and where appropriate, counted toward the 30 percent out-of-school expenditure requirement.

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This waiver assists local areas in maximizing the service delivery capacity of WIA youth programs within the One-Stop Career Centers by allowing youth who are determined not to follow an academic track, and are instead focused on employment, to have the same advantages of ITAs as adults and dislocated workers.

High Concentration of Youth Grants

The DOL granted California an extension of the waiver to provide additional assistance to local areas that have a high concentration of eligible youth at WIA Section 129(b)(2)(C). This waiver is granted through June 30, 2013.

Evaluations of Workforce Investment Activities

The DOL granted California an extension of the waiver of WIA Section 134(a)(2)(B)(ii) to conduct evaluations of workforce investment activities for adults, dislocated workers and youth to establish and promote continuous improvement of the statewide workforce investment system. This waiver is granted through June 30, 2013.

Incentive Grants to Local Areas

The DOL granted California an extension of the waiver to provide incentive grants to local areas to reward regional cooperation, local coordination of activities, and exemplary performance at WIA Section 134(a)(2)(B)(iii). This waiver is granted through June 30, 2013.

ACTION:

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

INQUIRIES:

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

/S/ MICHAEL EVASHENK, Chief
Workforce Services Division

Attachment is available on the Internet:

[Waiver Approval Letter](#)