

TO: WORKFORCE DEVELOPMENT COMMUNITY

SUBJECT: WAIVERS FOR OJT AND YOUTH PROCUREMENT AND NEW WAIVER
PROCESS

EXECUTIVE SUMMARY

Purpose

The Department of Labor (DOL) granted California two waivers under the *Workforce Investment Act* (WIA) related to On-the-Job Training (OJT) and Youth Procurement. Both waivers have been approved through June 30, 2016. Local Workforce Investment Areas (local areas) who wish to use these waivers should follow the new process outlined in the following guidance.

Note: The waivers only apply to WIA funding, law, and guidance. Therefore, during Program Year (PY) 2015-16, the provisions of the waivers will remain in effect for any unspent PY 2014-15 WIA funds; however, they will not apply to PY 2015-16 *Workforce Innovation and Opportunity Act of 2014* (WIOA) funds.

Scope

This directive applies to all local areas and other recipients of WIA funds.

Effective Date

This directive is effective upon release.

REFERENCES

- WIA Sections 101(31)(B), 112(b)(18)(B), 117(d)(2)(B), 117(e), 117(h)(4)(b)(i and ii), 123, 129(c)(2), 136(d)(1-2), 185(d) and 189(i)(3)(B)
- WIOA (Public Law 113-128)
- Title 20 *Code of Federal Regulations* (CFR) Sections 663.710, 664.405, 664.460, and 664.610
- Title 29 CFR Part 95: "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations"
- Title 29 CFR Part 97: "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"

- Training and Employment Guidance Letter (TEGL) [09-14](#), Subject: *WIA PY 2013 Annual Report Narrative* (October 8, 2014)
- TEGL [06-13](#), Subject: *WIA PY 2012 Annual Report Narrative* (October 18, 2013)
- Workforce Services Directive [WSD13-8](#), Subject: *WIA Statewide Waivers and State Plan PY 2013-2017* (January 8, 2014)
- Workforce Services Information Notice [WSIN13-69](#), Subject: *Proposed WIA Waiver Requests – Public Comment* (June 11, 2014)

STATE-IMPOSED REQUIREMENTS

This directive contains some state-imposed requirements. These requirements are printed in ***bold, italic type***.

FILING INSTRUCTIONS

This directive finalizes Workforce Services Draft Directive WSDD-114, issued for comment on March 18, 2015. The Workforce Services Division received six comments during the draft comment period. These comments did not result in any changes to the directive. A summary of the comments is provided as Attachment 4. Retain this directive until further notice.

BACKGROUND

The DOL granted California the following two waivers: 1) a waiver of WIA Section 101(31)(B) to increase the employer reimbursement for OJT, and 2) a waiver of the requirement for competitive procurement of service providers for three of the 10 youth program elements outlined in WIA Section 123.

The WIOA was enacted on July 22, 2014, with many of its provisions taking effect on July 1, 2015. However, the existing WIA state and local plans remain in effect through June 30, 2016. The DOL adjusted the approval dates of the aforementioned waivers to align with the end date of the state and local plans, and therefore approved these waivers through June 30, 2016.

As a part of its waiver request to the DOL, the state is required to identify the goals of the waiver(s) and the expected programmatic outcomes if the waiver is granted. Additionally, in its Annual Report submission to the DOL, the state must include a description of how the waivers changed the activities of the state and local areas, and how activities carried out under the waivers directly or indirectly affected state and local area performance. In order to comply with this federal mandate, California is implementing a new process for all local areas who wish to use a waiver. This new process will be used for all waivers moving forward in order to allow the state to track waiver usage as well as their effectiveness in achieving increased performance outcomes. This process will also inform future decisions regarding which waiver(s) the state will request from the DOL.

Local areas seeking to use either of these waivers will be required to submit the appropriate waiver form(s) along with current performance data to the state. Specific

instructions and forms are included in the Policy and Procedures section of this directive. If a local area wishes to take advantage of both waivers, then two separate submissions will be needed.

POLICY AND PROCEDURES

Waiver of Employer Reimbursement for OJT for Long Term Unemployed, Veterans, and Individuals with Disabilities

The DOL granted California a waiver of the required 50 percent employer contribution for OJT to permit the use of a sliding scale for the employer contribution based on the length of the participant's unemployment. This waiver also reduces the required 50 percent employer contribution for OJT for veterans and individuals with disabilities. This waiver is approved through June 30, 2016.

Under this waiver, the following reimbursement amounts are permitted:

- Up to 75 percent employer reimbursement where OJT is provided to individuals unemployed between 16-51 weeks.
- Up to 90 percent employer reimbursement where OJT is provided to individuals unemployed for 52 weeks or more.
- Up to 90 percent employer reimbursement where OJT is provided to veterans or individuals with disabilities.

For those unemployed for less than 16 weeks, local areas may use the OJT sliding scale based on the size of a business as outlined in Workforce Services Directive [WSD13-8](#). Otherwise, the current statutory reimbursement requirement of 50 percent employer contribution will continue to apply.

Please note, since CalJOBSSM can only track unemployment for up to 26 weeks, local areas using the waiver for individuals unemployed for 52 weeks or more must include documentation in the participant's file that verifies the individual's length of unemployment. Self-attestation, case notes, or a copy of the Notice of Unemployment Insurance Award (DE 429Z) are all acceptable forms of documentation.

When determining the funding source for OJT, local areas must use the appropriate program funds for the appropriate WIA-eligible population. Local areas may provide OJT to individuals age 18 or older with WIA adult funds and must provide priority to low-income individuals when funds are limited. Local areas may also provide OJT to dislocated workers with WIA dislocated worker funds.

Waiver of Competitive Procurement of Youth Service Providers

The DOL granted California a waiver of the requirement for local areas to competitively procure youth providers for three of the 10 youth program elements. This waiver is approved through June 30, 2016.

Under this waiver, grant recipient/fiscal agent staff who are already providing framework services to youth are permitted to directly provide the youth program elements of

supportive services, follow up services, and work experience without the requirement of having to go through the additional competitive bidding process. Please note that when using this waiver, local areas must still meet the requirements set forth in Title 29 CFR Parts 95 and 97, and all state and local procurement laws and policies.

Process for Using Waivers

Local areas that would like to use either of these waivers must submit the corresponding form below:

- **To use the OJT waiver, local areas must complete the [OJT Employer Reimbursement Waiver Form](#) (Attachment 2).**
- **To use the competitive procurement of youth service providers waiver, local areas must complete the [Competitive Procurement of Youth Providers Waiver Form](#) (Attachment 3).**

Local areas must submit the completed forms and other required information to the attention of their assigned [Regional Advisor](#) at the address below:

Workforce Services Branch
Central Office Workforce Services Division
P.O. Box 826880, MIC 50
Sacramento, CA 94280-0001

Upon receipt of the information, the Regional Advisor will ensure all necessary documentation has been submitted, and then send the local area an e-mail confirming the state's approval to begin using the waiver(s).

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/ JOSÉ LUIS MÁRQUEZ, Chief
Central Office Workforce Services Division

Attachments are available on the Internet:

1. [Approval Letter from Department of Labor](#)
2. [OJT Employer Reimbursement Waiver Form](#)
3. [Competitive Procurement of Youth Providers Waiver Form](#)
4. [Summary of Comments](#)