

COVID-19 WIOA WAIVER GUIDANCE

EXECUTIVE SUMMARY

This policy provides guidance and establishes procedures regarding the implementation and utilization of *Workforce Innovation and Opportunity Act* (WIOA) waivers approved by the US Department of Labor (DOL), issued to address the economic impacts of the COVID-19 pandemic. This policy applies to Local Workforce Development Boards (Local Board), and is effective on the date of issuance.

This policy contains only state-imposed requirements. Retain this Directive until further notice.

This Directive finalizes Workforce Services Draft Directive COVID-19 WIOA Waiver Guidance (WSDD-224), issued for comment on March 24, 2021. The Workforce Development Community submitted two comments during the draft comment period. A summary of comments, including all changes, is provided as Attachment 3 to this Directive.

REFERENCES

- [WIOA \(Public Law 113-128\) \(PDF\)](#) Section 134(c)(3)(H)(i); Section 134(d)(2); Section 134(d)(5); Section 181(e); Section 189(i)(3)(A)
- [National Emergencies \(Public Law 94-412\)](#) Title II, Section 201, 90 Stat. 1255.
- Title 20 [Code of Federal Regulations](#) (CFR), Section 680.190, 680.19; Section 680.720(b)
- [Training and Employment Guidance Letter \(TEGL\) 8-18 \(PDF\)](#), *WIOA Title I and Wagner-Peyser Act Waiver Requirements and Request Process* (December 19, 2018)
- [California Executive Order N-33-20 \(PDF\)](#) (March 19, 2020)
- [Workforce Services Directive WSD19-06](#), *CalJOBSSM Activity Codes* (December 27, 2019)
- [Workforce Services Information Notice WSIN20-52](#), *COVID-19 WIOA Waivers* (April 2, 2021)

BACKGROUND

In order to provide Local Boards with additional flexibility when assisting those affected by the COVID-19 pandemic, the California Workforce Development Board (CWDB) and the Employment Development Department (EDD) requested four WIOA waivers from the DOL.

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

Of the four waivers requested, the following two waivers were denied:

- **Waiver of WIOA Section 134(d)(2)**
This waiver would allow for supportive services to be included amongst the list of follow-up services that can be provided to adult and dislocated worker participants for up to 12 months after they are placed in unsubsidized employment.
- **Waiver of WIOA Section 181(e)**
This waiver would address the limitation on the use of funds for business capitalization and permit funds to be used to capitalize small businesses that were impacted by the COVID-19 pandemic.

Both of the above mentioned waivers were declined by the DOL, who determined that current law already provides Local Boards with the flexibility to decide what specific services are suitable as follow-up services. In response, WSD19-06 was updated to provide Local Boards with further guidance regarding supportive and follow up services. Additional information regarding the denied waivers is available in the WSIN20-52.

Of the four waivers requested, the following two waivers were approved:

- **Waiver of WIOA Section 134(d)(5)**
This waiver allows up to 30 percent of WIOA Title I adult and dislocated worker local formula funds to be used for the provision of transitional jobs.
- **Waiver of WIOA Section 134(c)(3)(H)(i)**
This waiver allows up to a 90 percent reimbursement of on-the-job training (OJT) costs for businesses with 50 or fewer employees.

POLICY AND PROCEDURES

Under the DOL Secretary's waiver authority outlined in WIOA Section 189(i)(3)(A), and detailed in TEGL 8-18, the Secretary may waive certain provisions of WIOA Title I. Part of the waiver lifecycle requires states to estimate and then regularly assess whether the waiver is successfully achieving state goals.

As the goal of waivers is to provide opportunities to innovate and experiment with new approaches to service delivery, states with approved waivers must report in detail the waiver's impact and outcomes in the WIOA Annual Report. The DOL will consider outcome information as part of the criteria for granting renewal of a waiver, if requested.

The following waivers were approved and may be used by Local Boards from July 1, 2021 through June 30, 2022:

Transitional Jobs Waiver

According to 20 CFR 680.190, a transitional job is one that provides time-limited work experience, which is wage-paid and subsidized, and is in the public, private, or non-profit sectors for individuals with barriers to employment who are chronically unemployed or have inconsistent work history, as determined by the Local Board. These jobs are designed to enable an individual to establish a work history, demonstrate work success in an employee-employer relationship, and develop the skills that lead to unsubsidized employment.

Under WIOA Section 134(d)(5), a Local Board may use up to 10 percent of their combined WIOA Title I adult and dislocated worker formula funds for the provision of transitional jobs. This waiver would allow up to 30 percent of a Local Board's combined WIOA Title I adult and dislocated worker formula funds to be used for the provision of transitional jobs.

Subsidized employment is a proven tool for encouraging employers to hire new employees, especially individuals with barriers to employment, in order to meet new and changing economic demands, and can be mutually beneficial for job seekers and employers. Because of the economic impact of the pandemic, utilizing transitional job placements could be a critical service delivery strategy, especially for participants with significant barriers to employment who are struggling to attach or re-attach to the labor market.

This waiver provides Local Boards with increased flexibility to provide transitional jobs to individuals with barriers to employment in order to gain both income and work experience. Utilizing this waiver could also assist employers who, because of the pandemic-related changes to work policies and procedures, may need to hire additional employees to adjust and meet new service standards and operating procedures.

Projected Programmatic Outcome

As part of the waiver request, California projected that increasing the percentage of adult and dislocated worker funds spent on transitional jobs would lead to an estimated 10 percent increase in the number of adults and dislocated workers placed in transitional jobs for each full program year (PY) the waiver is in effect.

While Local Boards will not be held to this percentage increase individually, they are highly encouraged to mirror this goal as it could impact the state's ability to renew this waiver in the future.

On-the-Job Training Waiver

According to WIOA Section 3(44), OJT is training provided by the employer to a paid participant while they are engaged in productive work in a job that provides knowledge or skills essential to the full and adequate performance of the job. It is also limited in duration as appropriate to the occupation for which the participant is being trained, taking into account the content of the training, the prior work experience of the participant, and the service strategy of the participant.

Under WIOA Section 134(c)(3)(H)(i), a Local Board may reimburse the employer up to 50 percent of the wage rate of an OJT participant for the extraordinary costs of providing the training and additional supervision related to the training. This waiver would allow Local Boards to reimburse up to 90 percent of the wage rate of an OJT participant for the extraordinary costs of providing training and additional supervision related to the training if the business has 50 or fewer employees.

The majority of businesses in California are small businesses, which have drastically modified their service-delivery methods and procedures to adapt to the COVID-19 pandemic. On top of changing business practices, small businesses have adjusted to decreased supply and access to goods, services, employees, and patrons, while simultaneously acclimating to changes in demand and increasing production of crucial goods and services. This waiver would allow Local Boards to provide additional relief to small businesses who may be more risk-averse when it comes to hiring and training new employees during this time of economic instability.

Projected Programmatic Outcome

As part of the waiver request, California projected that increasing the OJT reimbursement rate for businesses with 50 or fewer employees would lead to a 25 percent increase in the number of adults and dislocated workers placed in OJT with small businesses for each full PY the waiver is in effect.

While Local Boards will not be held to this percentage increase individually, they are highly encouraged to mirror this goal as it could impact the state's ability to renew this waiver in the future.

Local Boards who are approved to use this waiver will be required to ensure the waiver is only being applied to businesses with 50 or fewer employees. While the state will not dictate how this verification occurs, Local Boards must retain records that show adherence to this requirement (e.g., validate employer account number, verify with Dun & Bradstreet Corp, etc.).

Waiver Application Process

The DOL requires the state to evaluate the effectiveness of waivers as part of the WIOA Annual Report. Therefore, the state must track which Local Boards are using the waivers.

In order to use either of the approved COVID-19 waivers, Local Boards must submit an Application for Transitional Jobs Waiver (Attachment 1) and/or the Application for On-the-Job Training Waiver (Attachment 2). Electronic signatures on the applications will be accepted.

Applications are due by June 30, 2021, and must be electronically signed by the Local Board Executive Director and submitted electronically to CWDBPolicyUnit@cwdb.ca.gov. Please include "WIOA Waiver Request Application" in the subject line. The CWDB and the EDD will review the applications and notify Local Boards via email of their approval or denial.

ACTION

Bring this Directive to the attention of the local Chief Elected Official, Local Board, and appropriate staff.

INQUIRIES

If you have any questions regarding this guidance, contact Ashley Anglesey at Ashley.Anglesey@cwdb.ca.gov.

/s/ JAIME L. GUTIERREZ, Chief
Central Office Workforce Services Division

Attachments:

1. [Application for Transitional Jobs Waiver \(DOCX\)](#)
2. [Application for On-the-Job Training Waiver \(DOCX\)](#)
3. [Summary of Comments \(DOCX\)](#)