

## **EMPLOYMENT DEVELOPMENT DEPARTMENT**

### **Adoption of Chapter 2.2. Workforce Investment Act Provisions, Sections 4508-1, 4508-3, and 4508-5 of Division 3. Employment Services Programs, of Part 1. Employment and Employability Services, of Title 22, California Code of Regulations**

### **WORKFORCE INVESTMENT ACT - DEFINITIONS, REPORTING REQUIREMENTS AND RECORD RETENTION**

#### **Initial Statement of Reasons**

#### **BACKGROUND:**

Senate Bill (SB) 302 (Stats. 2008, Chapter 376) added sections 9600.5 and 9600.7 to the California Unemployment Insurance Code (CUIC).

CUIC section 9600.5 requires the Employment Development Department (EDD) to annually report to the Governor, the Legislature, and the California Workforce Investment Board the prior year training expenditures of the Local Workforce Investment Boards (LWIBs) by November 30. The annual report must include: (1) a definition of qualifying training expenditures, (2) the total amount of federal funding provided to the State and to each of the Local Workforce Investment Areas (LWIAs) for the adult and dislocated worker programs, and (3) the amount of expenditures for training services within each program.

CUIC section 9600.7(a) authorizes the EDD to administer the requirements of the federal Workforce Investment Act of 1998 (WIA) in order to ensure state compliance with the objectives and requirements of the federal WIA; section 9600.7(b) provides the EDD with the authority to adopt, amend or repeal any rules and regulations necessary to implement Division 7, California Workforce Investment Act, of the CUIC.

#### **NECESSITY:**

SB 302 (effective January 1, 2009) added statutory authority (CUIC Sections 9600.5 and 9600.7) for the EDD's administration of the requirements of the federal WIA, including the authority to establish accounting, monitoring, auditing, and reporting procedures and criteria to ensure State compliance with the requirements of the federal WIA.

The proposed adoption of California Code of Regulations (CCR), title 22, section 4508-1 is necessary to establish definitions applicable to the WIA program

relating to the reporting and filing requirements for expenditures, closeouts and cash request documents. This regulatory adoption is necessary to help prevent any potential misinterpretations of commonly utilized terms and to provide consistency in the administration of the WIA program by both the State and the subrecipients of WIA funds. The proposed definitions will provide subrecipients with further clarity and guidance necessary to properly administer their programs utilizing WIA funds.

The proposed adoption of CCR, title 22, section 4508-3 is necessary to specify the reporting and filing requirements for expenditures, closeouts and cash request documents applicable to the federal WIA. The proposed adoption will strengthen the EDD's ability to properly administer the WIA program by ensuring that all required data and financial reports are submitted by subrecipients, in compliance with WIA (29 United States Code (USC) section 2935), 20 Code of Federal Regulations (CFR) section 667.300 as well as CUIIC section 9600.5.

The proposed adoption of section 4508-5 to the CCR, title 22 clarifies the record retention requirements for records of WIA funded programs, consistent with the requirements of 29 CFR section 97.42 and 29 CFR section 95.53. The proposed adoption will clearly define the time period that WIA records must be retained, which will enhance and improve the administration of the WIA program.

The proposed regulatory action to CCR, title 22, is as follows:

**Section 4508-1. Workforce Investment Act Definitions.**

Adoption of section 4508-1 will establish definitions for terms commonly utilized in the WIA program. These proposed definitions are in addition to and supplement the federal WIA definitions set out in 29 USC section 2801 and 20 CFR section 660.300. These proposed definitions are necessary to establish clear definitions that will enable the EDD to properly administer the WIA program in accordance with federal requirements. The proposed definitions are also necessary to provide subrecipients with further clarity and guidance necessary to properly administer their programs utilizing WIA funds.

Subdivision (a) - The proposed regulation would add the definition of "Accrual Basis of Accounting" to ensure all WIA subrecipients report expenditures in the period that the expense has been incurred.

Subdivision (b) - The proposed regulation would add the definition of "Capital Lease" as an arrangement that results in the ownership of property and is treated by Federal cost principles as a purchase.

Subdivision (c) - The proposed regulation would add the definition of "Cash Expenditure" as the actual outlay of funds for goods and services received.

Subdivision (d) – The proposed regulation would add the definition of “Cash Match” as non-WIA fund contributions provided to a WIA subrecipient to be used specifically for project activities. Examples include non-WIA money received from employers, foundations, private entities, and local governments.

Subdivision (e) – The proposed regulation would clarify that the term “Claim” is defined as specified in 2 CFR Part 225, Appendix A, Section B(5).

Subdivision (f) – The proposed regulation would clarify that the term “Cognizant Agency” is defined as specified in 2 CFR Part 225, Appendix A, Section B(6) and 2 CFR Part 230, Appendix A, Section E(1)(a).

Subdivision (g) – The proposed regulation would clarify that the term “Contract” is defined as specified in 2 CFR Part 225, Appendix A, Section B(8).

Subdivision (h) – The proposed regulation would add the definition of “Cost Allocation Plan” as the document that identifies and distributes allowable costs to cost objectives.

Subdivision (i) – The proposed regulation would add the definition of “Customized Training” as training: (1) that is designed to meet the special requirements of an employer or group of employers, (2) that is conducted with a commitment by the employer to employ an individual upon successful completion of the training, and (3) for which the employer shares the cost for the customized training based on a sliding scale. The sliding scale cost to the employer is determined based on the number of employees within the organization.

Subdivision (j) – The proposed regulation would add the definition of “Eligible Training Provider List” to mean the list of State approved training providers who provide customer-focused employment training for adults and dislocated workers.

Subdivision (k) – The proposed regulation would add the definition of “Entrepreneurial Training” as the training of a participant on skills to organize, manage and assume the responsibility of managing a business owned by the participant.

Subdivision (l) – The proposed regulation would add the definition of “Fair Market Value” as the selling price of an item sold through auction, advertisement, or a dealer. For items that are not sold, but retained by the entity, the “fair market value” will be based on similar items that are offered for sale.

Subdivision (m) – The proposed regulation would clarify that the term “Federal Awarding Agency” is defined as specified in 29 CFR Section 95.2(r).

Subdivision (n) – The proposed regulation would add the definition of “Federal Fiscal Year” as the time period that commences on October 1 and ends on September 30 of the following year.

Subdivision (o) – The proposed regulation would clarify that the term “Federal Share” is defined as specified in 29 CFR Section 95.2(t).

Subdivision (p) – The proposed regulation would clarify that the term “Governmental Unit” is defined as specified in 2 CFR Part 225, Appendix A, Section B(13).

Subdivision (q) – The proposed regulation would add the definition of “Grant Code” as a three digit indicator that identifies a specific allocation of funds.

Subdivision (r) – The proposed regulation would clarify that the term “Indirect Cost Rate Proposal” is defined as specified in 2 CFR Part 225, Appendix A, Section B(15) and 2 CFR Part 230, Appendix A, Section E(1)(f).

Subdivision (s) – The proposed regulation would add the definition of “Individual Training Account” as an account established for a WIA participant (adult or dislocated worker), with which the participant purchases training from an eligible provider.

Subdivision (t) – The proposed regulation would add the definition of “In-Kind Contributions” as non-cash resources provided to a WIA subrecipient to be used specifically for project activities. Examples include donated personnel, services, or the use of equipment and space.

Subdivision (u) – The proposed regulation would add the definition of “Job Readiness Training” as training in curriculum emphasizing employability skills.

Subdivision (v) – The proposed regulation would add the definition of “Leasehold Improvements” as improvements made on leased property by the lessee that reverts to the lessor at the end of the life of the lease.

Subdivision (w) – The proposed regulation would add the definition of “Leveraged Resources” as resources used by a WIA subrecipient to support subgrant activity, whether or not those resources meet the standards required for match funds.

Subdivision (x) – The proposed regulation would add the definition of “Literacy Training” as training that provides an individual with the ability to read, write, and speak in English and compute problems at levels of proficiency necessary to function on a job.

Subdivision (y) – The proposed regulation would add the definition of “Monthly Reporting” as the reporting monthly of expenditures by all LWIAs/ subrecipients in receipt of WIA 15 Percent Governor’s Discretionary funds, Dislocated Worker 25 Percent Additional Assistance funds, Youth funds, Rapid Response funds, National Emergency Grant funds, or any other Special Grant funds. Monthly reports would not be required for the months of March, June, September, or December since quarterly reports must be filed for these four months.

Subdivision (z) – The proposed regulation would add the definition of “Occupational Skill Training” as training which is directed toward a specific job skill.

Subdivision (aa) – The proposed regulation would add the definition of “Operating Lease” as a lease that does not meet the definition of a “capital lease.”

Subdivision (bb) – The proposed regulation would add the definition of “Other Training Services” as any training not identified as a training payment. Examples are in-house staff providing training (where a certificate is not issued), training materials, and supportive services that enable a participant to attend training.

Subdivision (cc) – The proposed regulation would clarify that the term “Prior Approval” is defined as specified in 2 CFR Section 230.25(b).

Subdivision (dd) – The proposed regulation would add the definition of “Private Sector Training” as training provided to participants within the WIA program by a for-profit organization, which is not controlled by the local government or the State.

Subdivision (ee) – The proposed regulation would add the definition of “Program Year” to mean the time period that commences on July 1 and ends on June 30 of the following year.

Subdivision (ff) – The proposed regulation would add the definition of “Quarterly Reporting” as the financial reports due each quarter of a year.

Subdivision (gg) – The proposed regulation would add the definition of “Skills Upgrading and Retraining” as the process of upgrading a skill.

Subdivision (hh) - The proposed regulation would add the definition of “Subrecipient” as the recipient of a WIA subgrant awarded directly through the EDD.

Subdivision (ii) – The proposed regulation would add the definition of “Training Payments” as the price paid for tuition or instruction. These payments of funds are for participants to attend LWIA approved classroom instruction or other

training opportunities. Training payments include the use of ITAs for Eligible Training Provider List approved programs. Training payments can also include payments for contracted services for customized and on-the-job training.

### **Section 4508-3. Reporting Requirements.**

WIA section 185(a)(1), (29 USC 2935), requires that all recipients of funds under WIA must keep records that are sufficient to permit the preparation of reports required by WIA and to permit the tracing of funds to a level of expenditure adequate to ensure that the funds have not been spent unlawfully.

WIA regulation 20 CFR 667.300(a) requires all States and other direct grant recipients to report financial, participant, and performance data in accordance with instructions issued by the federal Department of Labor (DOL). 20 CFR 667.300(b) provides that a State or other direct grant recipient may impose different forms or formats, shorter due dates, and more frequent reporting requirements on subrecipients. However, the recipient must still meet the reporting requirements imposed by DOL.

Thus, adoption of section 4508-3 is necessary to delineate the reporting requirements for financial information applicable to the WIA program. Adoption of section 4508-3 is necessary to strengthen EDD's ability to properly administer the WIA program by ensuring that all required data and financial reports are submitted by WIA subrecipients, in accordance with WIA (29 USC section 2935), 20 CFR section 667.300, as well as CUIIC section 9600.5.

Subdivision (a) – WIA section 185(c)(2), (29 USC 2935), requires each State, each local board, and each recipient (other than a subrecipient, subgrantee, or contractor of a recipient) receiving funds under WIA to prescribe and maintain comparable management information systems, in accordance with guidelines prescribed by the Secretary of DOL, designed to facilitate the uniform compilation, cross tabulation, and analysis of programmatic, participant, and financial data, on statewide, local area, and other appropriate bases, necessary for reporting, monitoring, and evaluating purposes.

This regulation is necessary to ensure that WIA subrecipients submit financial data through the State's designated system, which is utilized to promote the uniform compilation and analysis of data for reporting to the federal government. The proposed regulation would require all WIA subrecipients to utilize a system capable of reporting financial data through the State's designated automated system. The proposed regulation would require such subrecipients to submit all financial and closeout WIA financial data using the State's designated automated system.

Subdivision (b) - The proposed regulation would require all WIA subrecipients to fully comply with all the provisions of the WIA, consisting of federal law,

regulations, directives, policies, procedures and amendments to the WIA program. This regulation is necessary to ensure that WIA subrecipients comply with all criteria set out in federal WIA law, regulations, and policies, in addition to the requirements set out in California regulations.

Subdivision (c) - The proposed regulation would require all WIA subrecipients to develop and distribute procedures to their subgrantees for the reporting of WIA expenditures. This would also include procedures related to closeout data. This regulation is necessary to ensure that all required data and financial reports are submitted by subrecipients as well as their subgrantees, in accordance with WIA (29 USC section 2935), 20 CFR section 667.300, as well as CUI section 9600.5.

Subdivision (d) - The proposed regulation would require WIA subrecipients to submit financial data using the applicable State's "WIA Summary of Expenditures" form, depending on the type of subgrant. The subrecipient is required to complete all the fields within the appropriate form. This regulation is necessary to ensure that all required data and financial information are submitted by WIA subrecipients, in accordance with WIA (29 USC section 2935), 20 CFR section 667.300, as well as CUI section 9600.5.

Subdivision (e) - The proposed regulation would require WIA subrecipients to submit monthly WIA financial data reports to the State by the 20<sup>th</sup> of each month. If the 20<sup>th</sup> of a month falls on a holiday or weekend, the proposed regulation requires subrecipients to submit their monthly financial reports by the close of business on the last working day prior to the reporting deadline. This regulation is necessary to ensure that all required data and financial information are submitted to EDD by WIA subrecipients within a specific timeline, in order to allow EDD adequate time to prepare and submit its financial reports to the federal government within the WIA deadlines.

Subdivision (f) - The proposed regulation would require WIA subrecipients to submit quarterly WIA financial data reports to the State by the 20<sup>th</sup> of each month following the report period. If the reporting deadline falls on a holiday or weekend, the proposed regulation requires subrecipients to submit their quarterly financial reports by the close of business on the last working day prior to the reporting deadline. This regulation is necessary to ensure that all required data and financial information are submitted to EDD by WIA subrecipients within a specific timeline, in order to allow EDD adequate time to prepare and submit its financial reports to the federal government within the WIA deadlines.

Subdivision (g) - The proposed regulation would require WIA subrecipients to submit closeout packages with WIA financial data to the State within 60 days after the occurrence of specified events. This regulation is necessary to ensure that all required data and financial information are submitted to EDD by WIA subrecipients within a specific timeline, in order to allow EDD adequate time to

prepare and submit its financial reports to the federal government within the WIA deadlines specified in 29 CFR 95.71.

The proposed regulation would also require the subrecipient to submit specific forms as part of the closeout package in order to ensure all required data and financial information are submitted to EDD by WIA subrecipients to comply with the provisions of 20 CFR 667.300:

- (1) A WIA Subrecipient Release form must be completed to release and discharge the State and its employees from all potential liabilities, obligations or claims under the subgrant.
- (2) A WIA Subrecipient's Assignment of Refunds, Rebates, and Credits form must be completed to assign to the State all right, title and interest arising from the performance of the subgrant. Through this form, the subrecipient agrees to take whatever action necessary to effect the prompt collection of all refunds, rebates, credits or other amounts due or which may become due.
- (3) A WIA Contract Closeout Tax Certification form must be completed to document compliance with legal requirements that the subrecipient obtain employer identification/account numbers, collect, pay, deposit, and report federal, State and local taxes, and provide W-2 forms to employees.
- (4) A Property Closeout Inventory Certification Form is required to document the general disposition of inventory purchased with WIA funding when a subrecipient is no longer funded with WIA program funds.
- (5) A WIA Closeout Inventory form must be completed to document the specific disposition of inventory purchased with WIA funding when a subrecipient is no longer funded with WIA program funds.
- (6) A WIA Closeout Status of Cash form must be completed for all closeouts to document the amount of cash that has been drawn down under a specific grant code, the total expenditures and the unexpended balance that will need to be de-obligated.

#### **Section 4508-5. Record Retention Requirements.**

WIA regulation 20 CFR 667.200(a) specifies that State, local, and Indian tribal government organizations that receive grants or cooperative agreements under WIA must follow the common rule "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," which is codified at 29 CFR part 97. Additionally, 20 CFR 667.200(b) specifies that institutions of higher education, hospitals, other non-profit organizations, and commercial organizations must follow the common rule implementing OMB Circular A-110, which is codified at 2 CFR part 215 and 29 CFR part 95.

Accordingly, adoption of section 4508-5 is necessary to clarify the record retention requirements applicable to the WIA program. Adoption of section 4508-5 is necessary to strengthen EDD's ability to properly administer the WIA program by ensuring that specific records are maintained and stored for the time periods established under WIA and 29 CFR sections 97.42 and 95.53.

Subdivision (a) – The proposed regulation would require any WIA subrecipient to maintain financial records concerning the WIA program for a period of three years from the date that the last expenditure report was filed with the EDD. This regulation is necessary to ensure that financial records are maintained and stored for the time periods established under WIA and 29 CFR sections 97.42 and 95.53.

Subdivision (b) – The proposed regulation would require any WIA subrecipient who purchased real property or equipment with WIA funds to maintain records for a period of three years from the date of final disposition of the property or equipment. The terms "Equipment" and "Real Property" are defined in federal regulations at 29 CFR sections 97.3 and 95.2. This regulation is necessary to ensure that real property and equipment records are maintained and stored for the time periods established under WIA and 29 CFR sections 97.42 and 95.53.

Subdivision (c) – The proposed regulation would require any WIA subrecipient to maintain complaint records concerning the WIA program for three years from the date the complaint was resolved. This regulation is necessary to ensure that complaint records are maintained and stored for the time periods established under WIA and 29 CFR sections 97.42 and 95.53.

Subdivision (d) – The proposed regulation would prescribe a different records retention requirement for records of a subgrant or agreement which is the subject of litigation, audits or claims. Specifically, the records would need to be maintained by the WIA subrecipient until such time as the litigation, audit, or claim has been resolved, or until the end of the regular three year record retention period, whichever period is later. This regulation is necessary to ensure that records which are the subject of litigation, audits or claims are maintained and stored for the time periods established under WIA and 29 CFR sections 97.42 and 95.53.

Subdivision (e) – The proposed regulation would require a WIA subrecipient to maintain records associated with its indirect cost rate packages for a period of three years from the end of the Fiscal/Program Year that contains the final grant costs. This regulation is necessary to ensure that records related to indirect cost rate packages are maintained and stored for the time periods established under WIA and 29 CFR sections 97.42 and 95.53.

**PLAIN ENGLISH CONFORMING STATEMENT:**

The Department has drafted the proposed regulations in plain English pursuant to section 11346.2(a)(1) of the Government Code.

**CONSIDERATION OF ALTERNATIVES:**

In accordance with section 11346.2(b)(3)(B) of the Government Code, there were no reasonable alternatives to be considered by the Department.

**SMALL BUSINESS IMPACT:**

The Department has determined that the proposed regulations will have no effect on small businesses because the regulations do not impose any new mandates on small businesses. The proposed regulations do not require that small businesses take any action or refrain from taking any action in regards to conducting business.

**ECONOMIC IMPACT STATEMENT:**

The Department does not anticipate this regulatory action will result in any costs to the federal government, to State government, to local county governments, to private individuals, or to businesses and small businesses. Therefore, no costs are shown on the Economic and Fiscal Impact Statement.

The Department has made an initial determination that the adoption of sections 4508-1, 4508-3 and 4508-5 will not have a significant statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states. Adoption of section 4508-1 will clarify WIA terminology by adding definitions to supplement the existing federal definitions set out in WIA (29 USC section 2801) and 20 CFR section 660.300. This proposed regulatory action will enhance the ability of the State to administer the WIA program with no adverse impact to the workforce community within the State. Additionally, the adoption of sections 4508-3 and 4508-5 will clarify the reporting and record retention requirements for the WIA program, as specified in federal law. The regulatory action does not impose any additional new costs other than those costs already being incurred.

The Department has also determined that the adoption of proposed sections 4508-1, 4508-3 and 4508-5 will not affect the creation or elimination of jobs within the State of California; the creation of new businesses or the elimination of existing businesses within the State of California; or the expansion of businesses currently doing business within the State of California.

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