

October 16, 2009

TITLE 22. 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**

Notice of Proposed Rulemaking

The Employment Development Department (EDD) is proposing to adopt regulations pertaining to the administration of the requirements of the federal Workforce Investment Act of 1998 (WIA). The proposed regulations will establish accounting, monitoring, auditing and reporting procedures and criteria to ensure compliance with WIA requirements. The proposed regulations will be added as California Code of Regulations (CCR), title 22, Chapter 2.2 (sections 4508-1, 4508-3, and 4508-5) of Division 3, Part 1.

The Department will adopt these regulations after considering all comments, objections, or recommendations regarding the proposed regulatory action.

Informative Digest/Policy Statement Overview:

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 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 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.

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 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 CUIC 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.

Authority and Reference:

Authority: Sections 305, 306 and 9600.7, Unemployment Insurance Code.
Reference: Sections 9600.5 and 9600.7, Unemployment Insurance Code.

Fiscal Impact:

Anticipated costs or savings in federal funding to the State: The adoption of section 4508-1 will establish additional definitions to be used in the administration of the WIA program; therefore, there will be no anticipated costs or savings in federal funding to the State. Furthermore, since the financial information subject to the proposed regulations is already being collected, gathered, submitted and stored for the Department of Labor by EDD, the adoption of the proposed regulations for sections 4508-3 and 4508-5 do not impose any new costs or savings in federal funding to the State.

Anticipated costs or savings to any State Agency: The adoption of section 4508-1 will establish additional definitions to be used in the administration of the WIA program; therefore, there will be no anticipated costs or savings to any State Agency. Furthermore, since the financial information subject to the proposed regulations is already being collected, gathered, submitted and stored for the Department of Labor by

EDD, the adoption of the proposed regulations for sections 4508-3 and 4508-5 do not impose any new costs or savings to any State Agency.

Anticipated costs or savings to any local agency or school district: None

Significant statewide adverse economic impact: 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.

The cost impact on representative persons or businesses: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Anticipated impact on housing costs: The proposed regulations will have no effect on housing costs.

Anticipated non-discretionary costs or savings imposed upon local agencies:
None

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.

Local Mandate Determination:

The Department has determined that the proposed regulations will not impose any new mandates on school districts or other local governmental agencies or any mandates which must be reimbursed by the State pursuant to Part 7 (commencing with section 17500), Division 4 of the Government Code.

Consideration of Alternatives:

In accordance with section 11346.5(a)(13) of the Government Code, the Department must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulatory action.

Written Comment Period:

Any interested person, or his or her authorized representative, may submit written comments on the proposed action to Laura Colozzi via U.S. mail, e-mail, or fax (see U.S. mail and e-mail addresses and fax number indicated below). **E-mail comments should include true name and mailing address of the commentor. Written comments submitted via U.S. mail, e-mail, or fax, must be received by the Department no later than November 30, 2009, at 5 p.m.** Please submit any written comments before that time. The Department cannot accept written comments after the close of the public comment period.

Contact Persons

Inquiries or comments should be directed to:

(Mailing address)	Laura Colozzi, Legal Analyst Employment Development Department P. O. Box 826880 Legal Office, MIC 53 Sacramento, CA 94280-0001
(Hand delivery)	Laura Colozzi, Legal Analyst Employment Development Department 800 Capitol Mall, Room 5020 Legal Office, MIC 53 Sacramento, CA 95814
Telephone No.:	(916) 654-7712
Fax No.:	(916) 654-9069
E-Mail Address:	eddlegal@edd.ca.gov

Note: In the event Laura is unavailable, inquiries should be directed to the following backup contact persons at the same address as noted above:

Name: Penny Ayers, Legal Analyst
Telephone No.: (916) 654-8410

Questions regarding the substance of the proposed regulatory action should be directed at this time to:

Name: Deanna Asuncion, Senior Staff Counsel
Telephone No.: (916) 654-8410

Internet Website Access

The Department has posted on its internet website <http://www.edd.ca.gov> materials regarding the proposed regulatory action. Select "Proposed Regulations."

Public Hearing:

No public hearing has been scheduled on the proposed action. However, if any person desires to submit oral comments, the Department will schedule a public hearing upon that person's written request. **Such request must be received no later than 15 days prior to the close of the written comment period which is 5 p.m. on November 30, 2009.** A request for hearing can be made by contacting the persons noted above.

Modification of Proposed Action:

If the Department makes any additional changes based on public testimony, those changes (other than nonsubstantial or solely grammatical modifications) will be made available for public comment for at least 15 days before they are adopted. Copies of any additional changes regarding the proposed regulatory action will be mailed to all persons who testified or submitted written comments at the public hearing (if one is scheduled); whose comments were received by the agency during the public comment period; and who requested notification from the agency of the availability of such changes.

Final Statement of Reasons:

After the close of the 45-day public comment period, the Department will summarize and respond to all public comments in a written final statement of reasons. To obtain a copy of the final statement of reasons, contact the persons noted above, or access the Department's Internet website at <http://www.edd.ca.gov>.

Further Information:

The Department has prepared and has available for review, upon request, the text of the proposed regulations discussed in this notice, written in plain English; a statement of reasons setting forth the purpose of the proposed regulations; and the information upon

which the Department relied in proposing the regulations. (If you received this notice by mail, a copy of the text of the proposed regulations and the statement of reasons were enclosed.) To obtain a copy, contact the persons noted above, or access the Department's Internet website at <http://www.edd.ca.gov>.

All the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public review. For inquiries regarding the rulemaking file or the regulations' process, contact the persons noted above.
