

DIRECTIVE

WORKFORCE SERVICES

Number: WSD07-8

Date: June 10, 2008

69:129:cs:12004

TO: WORKFORCE DEVELOPMENT COMMUNITY

SUBJECT: IMPLEMENTATION OF WIA STATEWIDE WAIVERS FOR PY 2007-2009

EXECUTIVE SUMMARY:

Purpose:

The purpose of this directive is to convey the policy and procedural information pertaining to five statewide waivers granted to the State of California under the Workforce Investment Act (WIA) of 1998.

Scope:

This directive applies to all 49 Local Workforce Investment Areas and all other recipients of WIA funding.

Effective Date:

This directive is effective upon release.

REFERENCES:

- WIA Sections 101(8)(C), 133(b)(4), 134(a)(3)(A)(iv), and 189(i)(4)
- Title 20 of the Code of Federal Regulations (Title 20 CFR) Section 661.420
- California's Strategic Two-Year Plan for Title I of the WIA of 1998, and the Wagner-Peyser Act (June 1, 2007)
- Workforce Services Directive WSD07-4, Local Plan Modifications Program Year (PY) 2007-08 (October 2, 2007)
- WIA Directive WIAD06-15, Eligible Training Provider List, (February 7, 2007)
- WIA Directive WIAD05-12, Transfer of Funds for Adult and Dislocated Worker Programs (January 12, 2006)

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STATE-IMPOSED REQUIREMENTS:

This directive contains only State-imposed requirements.

FILING INSTRUCTIONS:

This directive supersedes WIA Directive WIAD06-11, dated November 29, 2006, and finalizes Workforce Services Draft Directive WSDD-9 issued for comment on May 16, 2008. The Workforce Services Division (WSD) received no comments during the draft comment period. Retain this directive until further notice.

BACKGROUND:

On February 26, 2008, the State of California received approval for its request to continue all five of its existing statewide WIA waivers submitted to the Department of Labor (DOL) in adherence with the procedures set forth at WIA 189(i)(4) and Title 20 CFR 661.420. The DOL approval extends each of the following five waivers through June 30, 2009.

Eligibility of Training Providers

The State has been granted an extension to the waiver that extends the period of "Initial Eligibility of Training Providers." This waiver addresses the Eligible Training Providers List (ETPL) requirement for subsequent eligibility determination included in WIA Section 122(c)(5) and Title 20 CFR 663.530, related to eligible training providers provisions. It also facilitates the State's ability to continue the expansion of the State's ETPL and supports the State's progress toward new processes that broaden customer choice. Under the waiver, the State will be able to provide an opportunity for training providers to re-enroll and be considered enrolled as initial eligible training providers.

Individual Training Accounts (ITAs)

The State has been granted an extension to the waiver on the prohibition for use of youth WIA dollars to fund ITAs for older and out-of-school youth found at Title 20 CFR 664.510. The purpose of this waiver is to assist 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 access as adults and dislocated workers to the advantages of ITAs.

Incumbent Worker Training

The State has been granted an extension to the waiver that improves the ability of local boards to be more responsive to local area economic changes and to meet the needs of employers with incumbent workers who require training as described at WIA Section 134(a)(3)(A)(iv) and Title 20 CFR 667.130. This extension also increases the flexibility of the use of local formula funds for incumbent worker training in the State from 10 to 50 percent. Specifically, this waiver now permits local areas to request that up to 50

percent of local area WIA adult and dislocated worker formula funds be used to provide incumbent worker training.

Transferability of Adult and Dislocated Worker Formula Funds

The State's request to extend and expand the waiver of the funds transfer limitation at WIA Section 133(b)(4) and Title 20 CFR 667.140 has been granted. This waiver increases the State's flexibility to allow for the unlimited transfer of funds between funding streams. Specifically, this waiver allows the State to approve local area requests to transfer up to 100 percent of local area allocations between the WIA adult and dislocated worker programs.

Customized Training

The State has been granted an extension to the waiver for the requirement located in WIA Section 101(8)(C), which requires all employers to match at least 50 percent of the cost of customized training. The purpose of this waiver is to encourage greater employer participation. This waiver authorizes the use of the below-referenced sliding scale to determine the employer's share of the cost for the customized training effort.

- No less than 10 percent match is required of employers with 50 or fewer employees.
- No less than 25 percent match is required of employers with 51-100 employees.
- No less than 50 percent match is required of employers with more than 100 employees.

POLICY AND PROCEDURES:

Eligibility of Training Providers

On February 7, 2007, the Employment Development Department (EDD) issued [WIAD06-15](#) which provides Local Workforce Investment Boards (LWIB) with criteria and procedures for determining a provider and program's initial eligibility for inclusion on the statewide ETPL.

WIA Section 122 requires states to establish a list of providers who are eligible to receive WIA funds for training services provided to adults and dislocated workers. It establishes two separate procedures for the ETPL: initial eligibility and subsequent eligibility.

California has been granted a waiver of the requirement for subsequent eligibility specified under WIA Section 122(c)(5) and Title 20 CFR 663.530. This waiver allows the State to postpone the implementation of a subsequent eligibility process until July 2009.

Individual Training Accounts (ITAs)

The EDD will identify criteria for determining the use of the ITAs and provide guidance to LWIBs on how to assist youth in choosing the appropriate educational providers. In addition, the local boards 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.

Incumbent Worker Training

Notification from local areas that they intend to use up to 50 percent of their PY 2007-08 and/or 2008-09 adult and dislocated worker, allocated funds for incumbent worker training must be received in writing by the EDD's Workforce Services Division Central Office (WSDCO). 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 boards must track by funding stream the WIA funds used for incumbent worker training under this waiver. For PY 2007-08 funds, any amount used for incumbent worker training are to be noted in the "Comments" section of the appropriate financial report. If this changes, the State will issue further guidance. Also, with respect to this waiver, the local area's administrative, fiscal, and program activities will be subject to the State's monitoring processes.

Transferability of Adult and Dislocated Worker Formula Funds

This latest waiver (effective July 1, 2007 through June 30, 2009), provides for the transfer of 100 percent of funds between the adult and dislocated worker programs and applies *only* to PY 2007-08 and PY 2008-09 formula funds. It does not apply to the PY 2006-07 funds. With respect to the new waiver, requests from local areas to transfer funds between the adult and dislocated worker formula funding streams must be received in writing by the EDD's WSDCO. Requests should be addressed to the local area's Regional Advisor. To ensure any transfers of PY 2007-08 funds are included in the June 30, 2008 reports, all requests should have been in writing and submitted by May 31, 2008.

The WSD is currently in the process of revising the related Directive [WIAD05-12](#), Transfer of Funds for Adult and Dislocated Worker Programs, to provide the workforce development community general guidance on how to accurately report the transfer of funds i.e., from the adult program for use in the dislocated worker program or vice versa.

Customized Training

No request process is required for local areas to implement the employer match sliding scale for customized training. This waiver will remain in effect until further notice.

ACTION:

Implementation of these waivers could affect locally established policies and procedures. If programmatic changes occur, local areas may need to modify the job training plan. Please follow instructions outlined in [WSD07-4](#), Local Plan Modifications PY 2007-08.

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/ BILL BURKE
Assistant Deputy Director
Workforce Services Branch

/S/ BOB HERMSMEIER
Chief
Workforce Services Division

Attachment



FEB 26 2008

The Honorable Arnold Schwarzenegger
Governor of California
Sacramento, California 95814

Dear Governor Schwarzenegger:

It is with pleasure that I respond to the State of California's request for waivers of statutory and regulatory requirements under the Workforce Investment Act (WIA). This action is taken under the Secretary's authority to waive certain requirements of WIA Title I, subtitles B and E and Sections 8-10 of the Wagner-Peyser Act. In the Strategic State Plan for Title I of the Workforce Investment Act and the Wagner-Peyser Act for the two-year period, July 1, 2007, through June 30, 2009, the State submitted five waiver requests. We apologize for the delay in sending this confirmation of the notice provided in the State Plan approval letter, dated June 29, 2007. This was due to an oversight in our processing of a high volume of waiver requests. The requests are written in the format identified in WIA Section 189(i)(4)(B) and 20 CFR 661.420(c), and appear to meet the standard for approval at 20 CFR 661.420(e). The approved waivers described below are effective July 1, 2007.

Requested Waiver 1: Extension of the waiver of the time limit on the period of initial eligibility of training providers at 20 CFR 663.530.

The State indicates that a waiver extension would facilitate continued expansion of the State's Eligible Training Provider List and support the State's progress toward new processes that broaden customer choice. The State is granted an extension of the waiver through June 30, 2009, effective July 1, 2007. Under the waiver, the State will be able to provide an opportunity for training providers to re-enroll and be considered enrolled as initially eligible providers.

Requested Waiver 2: Extension of the waiver to permit the use of Individual Training Accounts (ITAs) for older and out-of-school youth.

The State is granted an extension of the waiver of the prohibition on the use of ITAs for older and out-of-school youth at 20 CFR 664.510, through June 30, 2009, effective July 1, 2007. Under the waiver, the State will identify criteria for determining the use of the ITA and provide guidance to local workforce boards on how to assist youth in choosing the appropriate educational providers. The State should also ensure that funds used for ITAs are tracked and reflected in the individual service strategies for these youth.

Requested Waiver 3: Expansion of the State's approved waiver to permit local areas to request the use of local area formula funds to support incumbent worker training.

The State indicates that this waiver is allowing local boards to respond better to local economic changes and challenges in serving employers with workers who require training. The State is seeking to increase its flexibility from 10 to 50 percent. The State is granted a waiver of the language that limits the authority to provide the activities identified in WIA Section 134 to the State. This waiver will permit local areas to request the use of up to 50 percent of local area WIA Adult and Dislocated Worker formula funds to provide incumbent worker training identified at WIA Section 134(a)(3)(A)(iv), through June 30, 2009, effective July 1, 2007. These funds must be tracked by funding stream. Further, the State is required to report performance outcomes for incumbent workers served under this waiver in the Workforce Investment Act Standardized Record Data.

Requested Waiver 4: Expansion of the State's approved waiver of the funds transfer limitation at WIA Section 133(b)(4).

The State seeks an increase in the flexibility allowed under this waiver to provide for an unlimited transfer of funds between funding streams. The request for funds transferability is consistent with one of the improvements that the Administration is seeking in the reauthorization of the Workforce Investment Act – the consolidation of the WIA Adult, WIA Dislocated Worker, and Wagner-Peyser Act (Employment Service) funding streams. The State is granted a waiver of the funds transfer limitation at WIA Section 133(b)(4), through June 30, 2009, effective July 1, 2007. The waiver allows the State to approve local area requests to transfer up to 100 percent of local area allocations between the WIA Adult and Dislocated Worker programs.

Requested Waiver 5: Extension of the waiver of the required 50 percent employer match for customized training at WIA Section 101(8)(C).

The State indicates that the waiver has proved to be useful to local boards, particularly those engaged in regional planning that strive to serve small businesses. We are granting a waiver extension through June 30, 2009, effective July 1, 2007. Under the waiver, the following sliding scale is permitted: 1) no less than 10 percent match for employers with 50 or fewer employees, and 2) no less than 25 percent match for employers with 51-100 employees. For employers with more than 100 employees, the current statutory requirements continue to apply.

The granted waivers are incorporated by reference into the State's WIA Grant Agreement, as provided for under paragraph 3 of the executed Agreement, and constitute a modification of the State's approved Strategic Plan. A copy of this letter should be filed with the State's WIA Grant Agreement and the approved Strategic Plan.

We appreciate your patience as we resolved this matter, and we look forward to continuing to support you in pursuing your vision for the State's workforce system.

If you have any questions, please don't hesitate to call me at (202) 693-2700.

Sincerely,

A handwritten signature in cursive script that reads "Douglas F. Small".

Douglas F. Small
Deputy Assistant Secretary

Enclosure