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DEPARTMENT OF LABOR AND EMPLOYMENT DIVISION OF EMPLOYMENT AND TRAINING

WORKFORCE DEVELOPMENT PROGRAMS
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Category:	Workforce Investment Act
Subject#:	WIA Waiver Policy
Source:	Federal/State
Revise/Replace:	
Contact:	Workforce Development Programs Director
Distribution:	Managers, Workforce Development Staff, Workforce Region Directors, Fiscal
Colorado One-Stop System Policy Guidance Letter#:	11-06-WIA
Date:	April 5, 2011

I. REFERENCE(S):

Workforce Investment Act (WIA) of 1998, Section 133 (b) (4), 134 (a) (3) (IV) (I), 189(i) (4) (B); and WIA Final Rules-20CFR 661.400-420 and 663.145; TEGL 26-09: Workforce Investment Act (WIA) Waiver Policy and Waiver Decisions for PY 2009 and 2010; Program Guidance Letter (PGL) #10-07-P: Expenditure Authorization (EA) Procedures; PGL #06-09-WIA: WIA Waiver – Formula Set Aside for Local Activities

II. PURPOSE:

To establish policy and provide guidelines for the implementation of waivers granted by the US Department of Labor (USDOL) for the Colorado Department of Labor and Employment (CDLE) and local regions. To clarify conditions placed on certain waivers and to provide information on waiver accountability, including monitoring.

III. BACKGROUND:

A. Waiver Authority

Section 189(i) (4) of WIA authorizes the Secretary of Labor to waive certain statutory and regulatory provisions of the WIA and of the Wagner-Peyser Act (W-P). This general statutory and regulatory waiver authority provides increased flexibility to states and local areas, and it provides an opportunity for states and local area to organize services in ways that best meet the needs of the state, regional, and local economies and overcome legal or regulatory barriers that may impede innovation. Waivers provide flexibility in exchange for improved programmatic outcomes.

B. PY10 State Plan and Waiver Plan

On April 15th, 2010 USDOL issued TEGL 26-09 that provides guidance for states to secure approval of their WIA/W-P State Plans for PY09-PY10. The TEGL

also provides guidance and suggestions on submitting waiver requests and describes the steps ETA is taking to ensure that the state's and Local's waiver implementation is within the bounds of the waiver approval letters and within WIA statute and regulations. CDLE requested the extension of all waivers previously granted by USDOL through PY10, and expects to ask for extension of the same waivers through PY11.

IV: POLICY/ACTION:

A. Submitting Waiver Request(s)

The Colorado Department of Labor and Employment (CDLE) is responsible for the submission of waiver requests to the US Department of Labor based on input from the local regions regarding their needs for additional flexibility in delivering WIA and Wagner-Peyser program services. Such waivers can assist regions to address the needs of their regional and local economies and help support sector strategies that focus on the development of a pipeline of skilled workers. Upon consideration of the waiver requests from the local regions, CDLE will submit additional waiver plans to USDOL in an effort to provide added flexibility in exchange for improved programmatic outcomes.

B. Identifying Uses and Need for Waiver(s) in the Local Annual Plan

Local Boards may choose whether to implement one or more of the State's waiver(s) based on changing economic conditions and employer needs. In their local annual plans, regions should describe how they are using existing waivers and discuss their strategies to increase the number and level of training and educational opportunities for clients and employers as a result of using the waivers. At the same time regions should identify the need for additional waivers and provide a narrative regarding their potential benefit to the region's business and job seeker customers. A separate PGL with detailed instructions for the local annual plan submission will be issued each year in the month of March.

C. Describing Uses of Waivers in Expenditure Authorizations (See PGL 10-07-P: Expenditure Authorization (EA) Procedures)

Regions should utilize the Expenditure Authorization narrative to describe their intended use of waivers to increase flexibility within their WIA and Wagner-Peyser formula programs. This description should identify the specific waivers to be implemented, how they will be used and the expected impact on program activities, outcomes and performance, such as an increase in enrollments in training, addressing needs of targeted groups or businesses, etc. Such impacts should be also be reflected in the quarterly enrollment and performance charts associated with each formula program.

D. Impact on Local Policies:

When a region chooses to utilize one or more of the State's waivers, they will need to review their required local policies to determine needed modifications. Regions should update the impacted policies accordingly and submit them for approval to their local boards. At a minimum the local policies that may need to be revised are:

- Eligible Training Provider List
- Individual Training Accounts
- Internal and Subcontractor Monitoring
- On-The-Job Training and Customized Training

E. Waiver Monitoring and Accountability:

In TEGL 26-09, USDOL stated its intent to enhance its oversight and monitoring of waivers to determine what impacts waivers have on performance outcomes, gain insight into how states are using waivers, and to ensure that the integrity of the waiver guidelines are maintained. To address the same areas, CDLE will be adding the monitoring of waivers to its quarterly and annual monitoring processes in order to track how waivers have changed the activities of the local areas and directly or indirectly affected local area performance, and to insure compliance with waiver guidelines. CDLE will utilize the following mechanisms to track and monitor the use of waivers in each region:

- Local annual plans
- Expenditure Authorizations for WIA and Wagner-Peyser formula programs
- Local policies
- Quarterly reports for set aside waiver projects
- Activity and performance reports

V. CURRENTLY APPROVED WAIVERS

For Program Year 2010, there are 8 waivers that are currently approved by USDOL. (See Attachment A for a waiver chart that can be provided to staff.) Below is a detailed explanation of each waiver:

A. Waiver to permit the State to replace the performance measures at WIA Section 136(b) with the common measures.

- Under this waiver, the State can negotiate and report on the use of the 9 common measures for WIA performance in lieu of the 17 WIA performance measures.
- For the Adult and Dislocated Worker programs, the Common Measures are:
 - Entered employment
 - Employment retention
 - Average wage
- For the Youth program, the Common Measures are:
 - Placement in employment or post secondary education
 - Achievement of credentials
 - Literacy and numeracy gains

B. Waiver of WIA Section 123 that requires that providers of Youth program elements be selected on a competitive basis.

- Under this waiver, the One-Stop Career Centers are permitted to directly provide three youth program elements utilizing their own staff resources and avoiding competitive procurement
- The three youth program elements covered by the waiver are:
 - work experience
 - supportive services
 - follow-up

C. Waiver of WIA Section 133(b)(4) to increase the allowable transfer amount between Adult and Dislocated Worker funding streams allocated to a local areas

- Under this waiver, local areas have the ability to transfer more than the statutory limitation of 30% and will be permitted to transfer up to 50% of funds between the Adult and Dislocated Worker formula-allocated funding streams
- This waiver also allows transfer of up to 30% of Recovery Act funds between the

Recovery Act Adult and Dislocated worker programs

- Regions taking advantage of this waiver must still meet their responsibility to provide a full range of services to Adults or Dislocated Workers and meet the performance standards for these programs.

D. Waiver of WIA Section 134(a) to permit local areas to set aside a portion of local formula funds for incumbent worker training activities as part of a layoff aversion strategy

- Under this waiver, local areas will be permitted to set aside:
 - Up to 20% of local Dislocated Worker funds for incumbent worker training.
 - Up to 10% of Adult funds for incumbent worker training
 - A combination of no more than 10% Adult and 10% DW funds for incumbent worker training, when setting aside funds from both funding streams
- Youth funding set asides are not allowed.
- All training delivered under this waiver is restricted to skill attainment activities.
- WIA eligibility requirements and the Common Measures apply to any funds set aside under the waiver
- All Adult WIA funds for this purpose must be restricted to serving low-income adults.

Note: CDLE will be updating PGL #06-09-WIA: WIA Waiver – Formula Set Aside for Local Activities with the new provisions of this waiver.

E. Waiver of WIA Section 101(8)(C) to allow the use of a sliding scale for employer reimbursement for customized training costs.

- The purpose of this waiver is to create a greater incentive for businesses to become involved in workforce training activities
- Under this waiver, the following sliding scale is permitted:
 - For employers with 50 or fewer employees - a minimum of a 10% match
 - For employers with 51-250 employees - a minimum of a 25% match
 - For employers with more than 250 employees - Statutory 50% match

F. Waiver of WIA Section 101 (31)(B) to increase the employer reimbursement for on-the-job training costs.

- This waiver is also designed to create a greater incentive for businesses to become involved in workforce training activities
- Under this waiver, the following reimbursement amounts will be permitted:
 - For employers with 50 employees or fewer - Up to 90% reimbursement
 - For employers with 51-250 employees - Up to 75% reimbursement
 - For employers with more than 250 employees – the Statutory 50% reimbursement

G. Waiver of the provision 20CFR 663.530 that prescribes a time limit on the period of initial eligibility for training providers.

- Under this waiver, the State is allowed to postpone the determination of subsequent eligibility of training providers from 12 to 24 months after the date of the training provider's initial eligibility for inclusion on the state's Eligible Training Provider List.

- The State can also provide the opportunity for training providers to re-enroll and be considered enrolled as initial eligible providers.

H. Waiver of the prohibition at 20 CFR 664.510 on the use of Individual Training Accounts for older and out-of-school youth.

- Under this waiver, locals can use ITA's for older and out-of-school youth program participants, 18-21 years of age, who are enrolled in the WIA youth program.
- Youth will be afforded customer choice to select their training provider from the Eligible Training Provider List, in the same manner as adults and dislocated workers, and must otherwise meet the requirements of the local ITA policy.

VI. IMPLEMENTATION DATE:

Immediately upon receipt of this Program Guidance Letter

VII. INQUIRIES:

Please direct all inquiries to Shauna Kalicki, (shauna.kalicki@state.co.us or 303-318-8835) at Workforce Development Programs

Clarke D. Becker, Director
Workforce Development Programs

Attachment A
State of Colorado WIA Waiver Summary for PY10

Current Waivers	Provisions	Status
A. Common Measures	Allows use of the 9 common measures for WIA performance in lieu of the 17 WIA performance measures.	Extended through June 30, 2011
B. Youth Element Procurement	Allows regions to avoid competitive procurement of three of the ten required WIA Youth program elements: work experience, supportive services, and follow-up.	Extended through June 30, 2011
C. Transfer of Funds between the WIA Adult and Dislocated Worker Programs	Allows local regions the ability to transfer up to 50% of allocated funds between the Adult and Dislocated Worker programs (up to 30% for ARRA Adult and DW)	Extended through June 30, 2011
D. Set Aside of Local Formula Funds for Incumbent Worker Training	<p>Allows local regions to set aside up to 20% of their local formula allocations for incumbent worker training related to layoff aversion</p> <ul style="list-style-type: none"> • Up to 10% of AD funds • Up to 20% of DW funds • No more than 10% DW and 10% AD when setting aside both funding streams • WIA eligibility and Common Measures apply • Adult funds must be used for low-income individuals 	Extended through June 30, 2011
E. Employer Match for Customized Training	<p>Allows a sliding scale rather than a fixed 50% employer contribution, as follows:</p> <ul style="list-style-type: none"> • No less than a 10% match for employers with 50 or fewer employees • No less than a 25% match for employers with 51-250 employees • No less than a 50% match for employers with 250 or more employees 	Granted through June 30, 2011

<p>F. Employer Reimbursement for On-the-Job Training</p>	<p>Allows a sliding scale rather than a fixed 50% reimbursement to employers, as follows:</p> <ul style="list-style-type: none"> • Up to 90% reimbursement to employers with 50 or fewer employees • Up to 75% reimbursement to employers with 51-250 employees • Statutory 50% reimbursement to employers with 250 or more employees 	<p>Granted through June 30, 2011</p>
<p>G. Eligible Training Provider Reporting Requirements</p>	<p>Increases the deadline for reporting of subsequent eligibility performance data from 12 to 24 months after the date of the training provider's initial eligibility for inclusion on the state's Eligible Training Provider List.</p>	<p>Granted through June 30, 2011</p>
<p>H. Limitations on the ETPL for Older and Out-of-School Youth</p>	<p>Allows regions to apply their local Individual Training Account (ITA) policy to older and out-of-school youth, 18-21 years of age, who are enrolled in the WIA youth program. Youth could choose the training provider from the Eligible Training Provider List, like adults and dislocated workers, and must otherwise meet the requirements of the local ITA policy.</p>	<p>Granted through June 30, 2011</p>