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DEPARTMENT OF LABOR AND EMPLOYMENT
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Category: Workforce Investment Act
Subject#: WIA Waiver Policy
Source: Federal/State
Revise/Replace: 11-06-WIA
Contact: Workforce Development Programs Director
Distribution: Managers, Workforce Development Staff, Workforce Region Directors, Fiscal
Colorado One-Stop System Policy Guidance Letter#: 11-06-WIA Revised Nov 2013
Date: November 8, 2013

All revisions are highlighted in yellow.

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) #12-01-P: Expenditure Authorization (EA) Procedures.

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. 2012-2017 State Plan and Waiver Plan

On March 27, 2012, USDOL issued TEGL 21-11 that provided guidance for states to secure approval of their WIA/W-P State Plans for through June 30, 2017.

The TEGL also provided guidance and suggestions on submitting waiver requests and described the steps ETA is taking to ensure that state and Local 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 PY16, and requested three new waivers that must be extended on an annual basis. For PY13 Colorado requested the one-year extension of two of the new waivers; no states were allowed extensions of the third new waiver.

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 or April.

C. Describing Uses of Waivers in Expenditure Authorizations (See PGL 12-01-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 Years 2012 through PY16, there are 9 waivers that are currently approved by USDOL. (See Attachment 1 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.
- WIA Adult and 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

Note: See newly Revised PGL #06-09-WIA: WIA Waiver – Formula Set Aside for Local Activities with further guidance regarding 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.

I. Waiver of the prohibition at Section 134(a)(2) that directs states to use Dislocated Worker 25% funds for rapid response activities and additional assistance to local regions needing to address mass layoffs or plant

Under this waiver, the state (or local regions receiving 25% funds) may utilize up to 20% of Dislocated Worker 25% funds for incumbent worker training as part of a layoff aversion strategy. All training under this waiver would be restricted to skill attainment activities, with reporting of performance outcomes in the WIASRD for any incumbent workers served as a result of the waiver. Under 20 CFR 665.220, the State has developed a policy (PGL 12-03-WIA) for incumbent worker training that sets general guidelines for:

- Worker eligibility for incumbent worker training
- Criteria for identifying how the potential for layoff aversion and the eligible employers would be determined
- Requirements for determining how, besides averting layoff, the skills attained contribute either to the maintenance of employment or increase in employment security for workers

For the PY13 program year only, the following waivers have been approved (but may be extended on an annual basis through PY16):

- A. Waiver of WIA Section 134(a)(2)(B)(ii) and 20 CFR 665.200(d) requiring the conduct of evaluations of workforce investment activities for adults, dislocated workers, and youth.**
- B. Waiver of WIA Section 134(a)(2)(B)(iii) and 20 CFR 665.200(e) requiring provision of incentive grants to local areas.**

USDOL did not allow extension of the following waiver:

- C. Waiver of 20 CFR 665.200(b)(3) requiring dissemination of training provider performance and cost information.**

The State pursued these waivers as a result of losing the WIA 10% statewide funds, which were the source of funding to conduct these required statewide activities. Implementation of the waivers does not preclude the identification of non-WIA funds by the State to carry out similar statewide activities.

VI. IMPLEMENTATION DATE:
Immediately upon receipt of this Policy Guidance Letter

VII. INQUIRIES:
Please direct all inquiries to your **Regional Liaison** at Workforce Development Programs

Elise Lowe-Vaughn, Director
Workforce Programs, Policy and Strategic Initiatives

Attachments: 1. Waiver Summary Chart