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DEPARTMENT OF LABOR AND EMPLOYMENT
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Category: Workforce Innovation and Opportunity Act
Subject#: PY15 Waiver Policy
Source: Federal/State
Revise/Replace: 11-06-WIA
Contact: Workforce Development Programs Director
Distribution: Managers, Workforce Development Staff, Workforce Directors, Fiscal
Colorado One-Stop System Policy Guidance Letter#: 15-13-WIOA
Date: July 31, 2015

WIOA Impacts to Waivers are Yellow Highlighted

I. REFERENCE(S):

- Workforce Investment Act (WIA) of 1998, Section 133 (b) (4), 134 (a) (3) (IV) (I), 189(i) (4) (B);
- 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
- Workforce Innovation and Opportunity Act, PL 113-128 – July 22, 2014
- [TEGL 1-15: Guidance Regarding the Impact of WIOA Implementation on Waivers Approved under the Workforce Investment Act](#)

II. PURPOSE:

To update the status of waivers granted by the US Department of Labor (USDOL) for the Colorado Department of Labor and Employment (CDLE) and local workforce areas under WIA. To clarify conditions placed on WIA waivers by WIOA for PY15, when most provisions of the new law go into effect.

III. BACKGROUND:

A. Waiver Authority

Section 189(i) 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 areas to organize services in ways that best meet the needs of the state, regional, and local economies and to overcome legal or regulatory barriers that may impede innovation. Waivers provide flexibility in exchange for improved programmatic outcomes.

However, with the repeal of WIA on July 1, 2015, the waiver provisions of WIOA (also Section 189(i)) must be applied to both new and carry-in funds and program activities for PY15.

B. 2012-2017 State Plan and Waiver Plan

On March 27, 2012, USDOL issued TEGL 21-11 to provide guidance for states to secure approval of their WIA/W-P State Plans through June 30, 2017. However, the waiver provisions of this plan were implemented under the WIA waiver authority, which was repealed effective July 1, 2015 and was replaced with the guidelines provided by USDOL in TEGL 1-15 referenced above.

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 workforce areas regarding their needs for additional flexibility in delivering WIOA and Wagner-Peyser program services. Such waivers can assist local areas 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 workforce areas, 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 Plan

Local Workforce 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 plans, local areas should describe how they are using existing waivers and discuss their strategies to increase the number and level of training and educational opportunities for customers and employers as a result of using the waivers. At the same time, local areas should identify the need for additional waivers and provide a narrative regarding their potential benefit to the area's business and job seeker customers. A separate PGL with detailed instructions for the local plan submission will be issued each year.

D. Impact on Local Policies:

When local areas choose to utilize one or more of the State's waivers, they will need to review their required local policies to determine needed modifications. Local areas 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 for WIOA 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, to 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 add 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 local area:

- Local plans
- Expenditure Authorizations for WIOA and Wagner-Peyser formula programs
- Local policies
- Activity and performance reports

V. STATUS OF WIA WAIVERS FOR PY15

For PY 2015, there are 11 waivers impacted by WIOA (See Attach. 1 for a waiver chart that can be provided to staff.). Below is a detailed explanation of each waiver and the WIOA impacts:

A. Waiver to permit the State to replace the performance measures at WIA Section 136(b) with the common measures. This waiver continues for PY15.

- 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 to require that providers of Youth program elements be selected on a competitive basis. This waiver may be applied to PY14 carry-in funds that were obligated as of June 30, 2015, but cannot be applied to unobligated carry-in funds or any WIOA funds. A separate PGL will provide guidance on the WIOA requirements for competitive procurement of Youth program elements.

- 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 area. This waiver may be applied to PY14/FY15 WIA carry-in funds that were obligated as of June 30, 2015, but is not needed for unobligated WIA carry-in funds or WIOA funds, because WIOA allows transfers of more than 50% of local AD or DW formula funds without a waiver.

- 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 the transfer of up to 30% of Recovery Act funds between the

Recovery Act Adult and Dislocated worker programs

- Local areas 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. This waiver may be applied to PY14/FY15 WIA carry-in funds that were obligated as of June 30, 2015, but is not needed for unobligated WIA carry-in funds or WIOA funds, because WIOA allows local boards to approve a set aside of up to 20% of WIOA local formula Adult and Dislocated Worker funds for this purpose without a waiver. A separate PGL will provide detailed guidance regarding the WIOA changes related to incumbent worker training.

- 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

E. Waiver of WIA Section 101(8)(C) to allow the use of a sliding scale for the employer contribution to customized training costs. This waiver may be applied to PY14/FY15 WIA carry-in funds that were obligated as of June 30, 2015, but is not needed for unobligated carry-in funds or WIOA funds, because WIOA allows local boards to determine the size of the employer contribution based on employer size or other factors deemed appropriate by the local board. A separate PGL will provide detailed guidance regarding the WIOA changes related to customized training.

- 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 up to 90%. This waiver may be applied to PY14/FY15 WIA carry-in funds that were obligated as of June 30, 2015, but cannot be applied to unobligated carry-in funds or WIOA funds. However, WIOA allows local boards to approve a sliding scale up to a 75% reimbursement cap. A separate PGL will provide detailed guidance regarding the WIOA changes related to OJTs.

- 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. This waiver has expired and no longer applies to eligible 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. This waiver may be applied to PY14 WIA carry-in funds that were obligated as of June 30, 2015, but is not needed for unobligated WIA carry-in funds or WIOA funds, because WIOA allows the use of ITAs for out-of-school youth ages 18-24. A separate PGL will provide detailed guidance regarding the WIOA changes related to ITAs.

- Under this waiver, locals can use ITAs 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 areas needing to address mass layoffs or plant. This waiver may be applied to WIA carry-in funds that were obligated as of June 30, 2015, but cannot be applied to unobligated carry-in funds or WIOA funds. A WIOA waiver may not be needed, because rapid response funds that remain unobligated after the first program year of the funds can be redirected to statewide activities, which may include incumbent worker training.

Under this waiver, the state (or local areas 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

J. 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. This waiver has expired and cannot be renewed for PY15.

K. Waiver of WIA Section 134(a)(2)(B)(iii) and 20 CFR 665.200(e) requiring provision of incentive grants to local areas. This waiver has expired and cannot be

renewed for PY15.

VI. IMPLEMENTATION DATE:

July 1, 2015

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