

DEPARTMENT OF WORKFORCE DEVELOPMENT  
DIVISION OF EMPLOYMENT AND TRAINING  
ADMINISTRATOR'S MEMO SERIES

ACTION 10-08  
 NOTICE

ISSUE DATE: 5/10/2010  
DISPOSAL DATE: Ongoing

\*PROGRAM CATEGORIES:

AS  FL  ML  TR  
 CR  IT  RA  WIA  
 FM  JC  TC  YA  
 LM  TA

To: Workforce Development Board Directors  
Job Service Managers

From: Ron Danowski, Division Administrator  
Division of Employment and Training



RE: Administrator's Memo on Workforce Investment Act Title I Waivers

### Introduction

The Division of Employment and Training (DET) had previously issued two waiver policies based on U.S. Department of Labor (DOL) waiver issuances. This updated policy is based on DOL's November 13, 2009 issuance on the State's waiver requests for program year 2009-10. It makes clear the statewide waiver implementation of five of the approved waivers, and lists the three waivers that still require WDB waiver plans for DET approval due to the prescriptive nature of DOL's waiver/conditional approvals. The waiver plan elements and process steps remain the same as in the previous policies. With full implementation of waivers for this program year, the State will be required to address DOL's performance outcome's questions in the Workforce Investment Act (WIA) Annual Report. Therefore, explicit performance and reporting expectations have been added to this policy.

### Purposes

- I. Provides the November 13, 2009 U.S. Department of Labor's responses to the State's WIA Title I Waiver Plans  
[http://dwd.wisconsin.gov/dwdwia/PDF/state-plan-py2009%20\\_gov\\_letter111309.pdf](http://dwd.wisconsin.gov/dwdwia/PDF/state-plan-py2009%20_gov_letter111309.pdf)
- II. Identifies the State waiver approvals for statewide implementation and those that will require WDB waiver plans

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\*PROGRAM CATEGORIES:

AS--Apprenticeship  
Standards  
CR--Civil Rights

FM--Financial Management  
Requirements  
FL--Foreign Labor Certification  
IT--IT Systems  
JC--Job Center

LM--Labor Market  
Information  
ML--Migrant Labor  
RA--Refugee Assistance  
TC--Tax Credit Programs  
TA--Trade Assistance

TR--Transportation  
WIA--Workforce  
Investment Act  
YA--Youth Apprenticeship

III. Rescinds policy updates 08-02 and 09-02

IV. Reiterates the required waiver plan elements and processes from earlier policies, and adds further information on performance and reporting expectations

## **Background**

WIA provides continuing authority for DOL to grant waivers to states in implementing reforms in the workforce development system. The waiver authority also provides an important opportunity for the state and Workforce Development Boards (WDBs) to create a more nimble workforce infrastructure and expand innovative services to meet the needs of business and WIA participants.

## **Legislative/Regulatory References**

- WIA of 1998, 189(i)(4) PL 105-220
- 20 CFR § 661.400- 661.420
- November 13, 2009 U.S. Department of Labor Issuance

## **Waiver Update**

DOL issued a response to the State's waiver plans on November 13, 2009, that included approvals, disapprovals and explicit implementation guidance.

Based on that issuance, these are the waivers approved for statewide implementation for program year 2009-2010 that will not require individual WDB waiver plans:

- Common performance measures, WIA Section 136(b)
- Extending the period of initial eligibility of training providers, 20 CFR § 663.530
- This is available for all WDBs if they want to have the ability to increase the employer reimbursement for on-the-job training with a specified sliding scale based on company size along with other prescriptive guidance, WIA Section 101(31)(B)
- This is available for all WDBs if they want to have the ability to reduce the 50% employer match for customized training with a specified sliding scale based on company size along with other prescriptive guidance, WIA Section 101(8)(C)

Based on the November 13, 2009 DOL letter, these are the waivers approved for program year 2009-2010 that will require individual WDB waiver plans and approval by DET prior to implementation:

- Transfer authority up to 50% between the Adult and Dislocated Worker funding streams allocated to a local area, WIA Section 133(b)(4)
- The use of up to 10% of local Adult funds and up to 10% of local Dislocated Worker funds for incumbent worker training only as part of a lay-off aversion strategy serving only low-income/economically disadvantaged adults, along with other conditions such as training restricted to skill attainment activities, WIA Section 134
- Partial waiver of the competitive procurement process for youth providers only for specific elements along with other prescriptive guidance, WIA Section 123

The DOL letter of August 13, 2009, approved with conditions for the following waiver that has been implemented statewide for program year 2009-2010, and does not require individual WDB waiver plans:

- Youth performance measures for out-of-school youth ages 18-24 who are in work experiences outside the summer months through March 31, 2010, served with the American Recovery and Reinvestment Act funds, WIA Sections 136(b);129(c)(2)(I);129(c)(1)(A);129(c)(1)(B)

### **Summary of State Policy**

In order to waive an allowable WIA provision, the State must submit a Waiver Plan as part of the required WIA State Plans to DOL for approval, disapproval or modification. WDB waiver plans may be submitted to the Department of Workforce Development - DET at any time. Once DOL responds to a State waiver issue, the State is then able to approve, disapprove, or modify a WDB's waiver plan. If the WDB is authorized to implement a waiver for a given program year, the WDB must submit the waiver plan request annually if the WDB wants to extend the waiver. If a WDB requests a waiver that DOL has not authorized the State to implement, then DET determines if such a waiver would be beneficial to improve service delivery and, if so, submits a Waiver Plan to DOL.

The following outline details what is included in this policy:

- Required Waiver Plan elements on each WIA provision
- Process steps when the
  - a. WDB submits a Waiver Plan on an issue that the State has a DOL waiver approval, and
  - b. WDB submits a Waiver Plan on an issue that the State does not have a DOL waiver approval
- Performance and Reporting Expectations

### **Required Waiver Plan Elements**

Consistent with the intent to encourage local and regional responsiveness and innovative service delivery through waiver applications, the State has not added additional parameters to the DOL conditions for WDB waiver requests related to the DOL-approved issues. However, the State may apply conditions to WDB waivers as part of the DET approval process.

The following information must be substantively addressed in the waiver plan in a concise manner:

- Identify the statutory or regulatory requirements that are requested to be waived and the goals that the WDB(s) or state, as appropriate, intends to achieve as a result of the waiver and how those goals relate to the strategic plan goals;
- Describe the actions that the local area(s) or state, as appropriate, has undertaken to remove state or local statutory or regulatory barriers;
- Describe the goals of the waiver and the expected programmatic outcomes if the waiver request is granted. Specify how the success and/or progress on outcomes will be measured or determined, including how the baseline will be/has been established and what data sources will be used;

- Describe the individuals affected by the waiver;
- Describe the process that will be used to monitor the progress in implementing such a waiver; and
- Describe the process the WDB(s) used to post public review and comment notices that ensure meaningful public comment. Include all comments received on the requested waiver(s), and modify the waiver plan as appropriate in response to the public input.

Where documentation (e.g., statistical information, reports, and focus groups) is available, reference it to correspond with statements made in the waiver plan.

### **Process Steps Outlined Depending on the Waiver Issue Status**

As noted in the Summary first paragraph on the previous page, the State must first acquire a waiver approval from DOL before DET can entertain individual WDB waiver requests. WDBs may request a waiver that either has been approved by DOL, or, that the State would need to attain DOL approval. The following outlines the process steps when the

- WDB submits a Waiver Plan on an issue that the State has a DOL waiver approval
- WDB submits a Waiver Plan on an issue that the State does not have a DOL waiver approval

#### WDB submits a Waiver Plan on an issue that the State has a DOL waiver approval

1. WDBs may submit waiver requests to DET at any time during the program year. WDBs are also provided an opportunity to request waivers via the local plan process. WDBs may explore waiver requests informally with DET prior to a formal submittal of a waiver plan. If a WDB intends to develop a waiver plan, they must notify DET and all other WDB Executive Directors of their intentions for purposes of possible statewide coordination and inclusion of other local areas in the plan.
2. WDBs will submit to DET their waiver plan request(s) with detailed explanations to meet the WIA required elements.
3. Describe the process the WDB(s) used to post public review and comment notices that ensure meaningful public comment. Include all comments received on the requested waiver(s), and modify the waiver plan as appropriate in response to the public input.
4. DET will review the waiver request, and respond to the WDB within 30 days with an approval, disapproval, modification, or pending status per DOL. The state may apply conditions to an approval, and, WDBs may need to modify their local plans.

#### WDB submits a Waiver Plan on an issue that the State does not have a DOL waiver approval

1. WDBs may submit waiver requests to DET at any time during the program year. WDBs are also provided an opportunity to request waivers via the local plan process. WDBs may explore waiver requests informally with DET prior to a formal submittal of a waiver plan.
2. WDBs will submit to DET their waiver plan request(s) with detailed explanations to meet the WIA required elements.

3. Within 30 days after the review and comment period, DET will either:
  - a. submit the waiver plan from the Governor to DOL;
  - b. request WDB modification of the waiver plan; or
  - c. not transmit the waiver plan to DOL, and provide a letter of explanation to the WDB.  
DET may convey the issue of concern to DOL for future consideration.
4. Upon receipt of the state's waiver plan, DOL has 90 days for review and notification to the state on approval, disapproval or modification.
5. Modifications to the local or state plan(s) may be required if DOL approves the waiver plan request. DET will notify the WDB(s) of the DOL decision as well as any required modifications.

### **Performance and Reporting Expectations**

All participants served through the approved WDB waiver activities must be WIA eligible participants and meet any additional conditions specific to each waiver activity in the November 13, 2009 DOL letter.

The WDB is required to report performance outcomes for any individual served under each waiver in the Workforce Investment Act Standardized Record Data system. Therefore, all participants must be recorded in Automated System Support for Employment and Training (ASSET). The customized training and OJT service can be found in the Manage Services Menu. For adults and dislocated workers, the service is a Training service. For youth, the service is on-the-job training.

A new code will be added for the incumbent worker training waiver that should be used only if it is part of a lay-off aversion and restricted to skill attainment activities. Also, an edit will be added in ASSET to prevent associating customized training and on-the-job training services with Individual Training Account services.

In addition to the WDB annual performance data reporting, the State must address the impact these waivers had on the State's performance in the WIA Annual Report. WDBs will be asked to explain how the waiver(s) has changed the activities of the local areas, and how activities carried out under the waiver(s) have directly or indirectly affected local area performance outcomes.

Specific to the waivers on Incumbent Worker Training for lay-off aversion, On-the-Job Training, and Customized Training, the WDBs will need to provide a narrative annually to:

- Identify what sector partnerships were involved in training activities as part of the Industry Sector Partnership Initiative as well as the employer size;
- Discuss whether the sliding scales were effective for increased employer participation (for OJT and Customized Training if waivers were used), and if the training helped the employer maintain a competitive advantage;
- What/how were the factors that contributed to the success of these programs; and
- Identify how many participants were hired as a result of these waiver trainings.

**Action Required:** The policy is effective with this issuance.

**Submittal Information:** If a WDB waiver plan(s) is not included in the local plan, forward your waiver request(s) to your Local Program Liaison.