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Date: February 10, 2009

To: WDB Directors
Job Service Managers

From: Gary Denis, Bureau Director *Gary Denis*
Bureau of Workforce Training, Division of Employment and Training

Subject: **State Policy Update 09-02 on Workforce Investment Act Title I (WIA) Waivers:
Updating State Policy 08-02 Waiver Process and Waiver Plan Requirements, and
Adding Implementation Detail for Three of the DOL-Approved State Waivers.**

Purpose

- I. Policy 08-02 provided a streamlined process for the state [or the Workforce Development Boards (WDB) to request WIA waivers to the state], for submittal to the U.S. Department of Labor (DOL). It also identified the elements that are required to be addressed in a waiver plan.
- II. Policy Update 09-02 adds a second process for WDBs to submit waiver requests to the state on specific WIA sections that the state has been given DOL waiver approval. This updated policy also provides information related to three of the DOL-approved state waivers.

Background

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

To that end, the Governor, endorsed by the Council on Workforce Investment, submitted to DOL a State Waiver Plan on August 29, 2008. The requested waivers were on issues related to:

- A. Transfer of Funds between Adult and Dislocated Worker Formula Allocation Funds
- B. Incumbent Worker Training with Formula Funds
- C. Youth Program Competitive Procurement Requirements
- D. Common Measures for Reporting Performance
- E. Unspent Formula Allocation Funds

DOL approved the above A - D waivers with some conditions. The DOL parameters in their November 26, 2008, letter are summarized in the implementation details below. The updated portion of this policy addresses three waivers from the above list: A., B. and C. The DOL-approved waivers now allow the state to entertain WDB waiver requests in these issue areas without further review by DOL or another local public review and comment period. These waivers were approved for PY 2008-09. Requests to extend these waivers for another year will be in the PY 09-10 State Plan Modification.

Legislative/Regulatory References

- WIA of 1998, 189(j)(4) PL 105-220
- 20 CFR § 661.400- 661.420
- State Policy 08-02

Updated Policy on Waiver Process and Waiver Plan Requirements

Process Steps Outlined Depending on the Waiver Issue Status:

This process is in State Policy 08-02 applicable to WDB or state requests for waiver(s) that have not been approved by DOL.

1. WDBs may submit waiver requests to the Department of Workforce Development, Division of Employment and Training (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 as described in the section below.
3. An opportunity for stakeholders to participate in the process of developing the waiver plan and a public review and comment period must be provided that ensures meaningful public comment, including business and organized labor as well as public officials, community-based organizations and other stakeholders. DET will initiate the public review and comment period with assistance from the affected WDAs for regional public notification.
4. 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;
 - 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.
5. Upon receipt of the state's waiver plan, DOL has 90 days for review and notification to the state on approval or disapproval.
6. 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.

This is a new process applicable to WDB requests for waiver(s) on issues that the state has received DOL 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 as described in the section below.
3. DET will review the waiver request, and respond to the WDB within 30 days. The state may apply conditions to an approval, and, WDBs may need to modify their local plans.

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
- Only applicable to waiver issues not approved by DOL: Describe the process the WDB(s) and DET 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.

Specific DOL-Approved State Waivers Detail

A. Transfer of Funds between Adult and Dislocated Worker Formula Allocation Funds WIA Section 133(b)(4)

The waiver allows the state to approve WDB requests to transfer up to 100 percent of WDB formula allocations between the WIA Adult and Dislocated Worker Programs. The waiver will give WDBs the ability to rapidly respond to ongoing changes and significantly increase WDB's flexibility over program delivery to address specific geographic, demographic and industry needs.

B. Incumbent Worker Training with Formula Funds WIA Section 134

DOL approved this waiver but broadened the scope beyond incumbent worker training activities to permit the use of up to 10 percent of WDB formula funds for any statewide employment and training activity identified in WIA section 134 (Attachment). The three DOL conditions are that WDBs:

- (1) track these funds by funding stream the same as is currently required;
- (2) track all participants served with these funds for performance; and
- (3) continue to conduct the required local employment and training activities in WIA section 134 (d).

This waiver will allow the use of local funds to address the skill upgrade needs of job seekers, develop exemplary program activities, and expand local service delivery options.

C. Youth Program Competitive Procurement Requirements WIA Section 123

DOL approved this waiver with three conditions:

- (1) applicable to rural areas only;
- (2) DET review WDB waiver requests on a "case-by-case basis and approval is granted only when the local area documents that there are no viable providers or that all current providers are underperforming"; and
- (3) DET "provide ongoing oversight and onsite monitoring of the Local Boards that choose to take advantage of this waiver."

ASSET Reporting: No changes at this time.

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.

This is the link to the DOL waiver approval letter and the State Waiver Plan:
http://dwd.wisconsin.gov/dwdwia/PDF/wi_waiver_govltr_112008.pdf

This policy can be accessed at: <http://dwd.state.wi.us/dwdwia/policy.htm>

Attachment

STATEWIDE EMPLOYMENT and TRAINING ACTIVITIES

SEC. 134. USE OF FUNDS FOR EMPLOYMENT AND TRAINING ACTIVITIES.

(a) Statewide Employment and Training Activities.--

(1) In general.--Funds reserved by a Governor for a State--

(A) as described in section 133(a)(2) shall be used to carry out the statewide rapid response activities described in paragraph (2)(A); and

(B) as described in sections 128(a) and 133(a)(1)--

(i) shall be used to carry out the statewide employment and training activities described in paragraph (2)(B); and

(ii) may be used to carry out any of the statewide employment and training activities described in paragraph (3), regardless of whether the funds were allotted to the State under section 127(b)(1) or under paragraph (1) or (2) of section 132(b).

(2) Required statewide employment and training activities.--

(A) Statewide rapid response activities.--A State shall use funds reserved as described in section 133(a)(2) to carry out statewide rapid response activities, which shall include--

(i) provision of rapid response activities, carried out in local areas by the State or by an entity designated by the State, working in conjunction with the local boards and the chief elected officials in the local areas; and

(ii) provision of additional assistance to local areas that experience disasters, mass layoffs or plant closings, or other events that precipitate substantial increases in the number of unemployed individuals, carried out in local areas by the State or by an entity designated by the State, working in conjunction with the local boards and the chief elected officials in the local areas.

(B) Other required statewide employment and training activities.--A State shall use funds reserved as described in sections 128(a) and 133(a)(1) (regardless of whether the funds were allotted to the State under section 127(b)(1) or paragraph (1) or (2) of section 132(b)) to carry out other statewide employment and training activities, which shall include--

(i) disseminating the State list of eligible providers of training services, including eligible providers of nontraditional training services, information identifying eligible providers of on-the-job training and customized training, and performance information and program cost information, as described in subsections (e) and (h) of section 122;

(ii) conducting evaluations, under section 136(e), of activities authorized in this section, in coordination with the activities carried out under section 172;

(iii) providing incentive grants to local areas for regional cooperation among local boards (including local boards for a designated region as described in section 116(c)), for local coordination of activities carried out under this Act, and for exemplary performance by local areas on the local performance measures;

(iv) providing technical assistance to local areas that fail to meet local performance measures;

(v) assisting in the establishment and operation of one-stop delivery systems described in subsection (c); and

(vi) operating a fiscal and management accountability information system under section 136(f).

- (3) Allowable statewide employment and training activities.--
- (A) In general.--A State may use funds reserved as described in sections 128(a) and 133(a)(1) (regardless of whether the funds were allotted to the State under section 127(b)(1) or paragraph (1) or (2) of section 132(b)) to carry out additional statewide employment and training activities, which may include--
- (i) subject to subparagraph (B), administration by the State of the activities authorized under this section;
 - (ii) provision of capacity building and technical assistance to local areas, one-stop operators, one-stop partners, and eligible providers, including the development and training of staff and the development of exemplary program activities;
 - (iii) conduct of research and demonstrations;
 - (iv) (I) implementation of innovative incumbent worker training programs, which may include the establishment and implementation of an employer loan program to assist in skills upgrading; and
(II) the establishment and implementation of programs targeted to empowerment zones and enterprise communities;
 - (v) support for the identification of eligible providers of training services as required under section 122;
 - (vi) (I) implementation of innovative programs for displaced homemakers, which for purposes of this subclause may include an individual who is receiving public assistance and is within 2 years of exhausting lifetime eligibility under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.); and
(II) implementation of programs to increase the number of individuals training for and placed in nontraditional employment; and
 - (vii) carrying out other activities authorized in this section that the State determines to be necessary to assist local areas in carrying out activities described in subsection (d) or (e) through the statewide workforce investment system.
- (B) Limitation.--
- (i) In general.--Of the funds allotted to a State under sections 127(b) and 132(b) and reserved as described in sections 128(a) and 133(a)(1) for a fiscal year--
 - (I) not more than 5 percent of the amount allotted under section 127(b)(1);
 - (II) not more than 5 percent of the amount allotted under section 132(b)(1); and
 - (III) not more than 5 percent of the amount allotted under section 132(b)(2), may be used by the State for the administration of youth activities carried out under section 129 and employment and training activities carried out under this section.
 - (ii) Use of funds.--Funds made available for administrative costs under clause (i) may be used for the administrative cost of any of the statewide youth activities or statewide employment and training activities, regardless of whether the funds were allotted to the State under section 127(b)(1) or paragraph (1) or (2) of section 132(b).