

November 20, 2009

To: Local Workforce Investment Act Boards (WIBs), Administrative Entities, Fiscal Agents, One-Stop Partners, ODJFS Regional Rapid Response Coordinators, Local Area Rapid Response Coordinators and the Ohio Department of Development (ODOD) Business Service Representatives

From: John Weber, Acting Deputy Director, Office of Workforce Development (OWD)

Subject: US Department of Labor (DOL) decisions on the waiver requests

On November 12, 2009, DOL responded to Ohio's waiver request of the statutory and regulatory requirements under the Workforce Investment Act (WIA). In some cases, DOL approved, modified, or denied the waivers as we had anticipated. In other cases, the DOL decisions were not anticipated. In all cases, these decisions are effective from November 12, 2009 and expire on June 30, 2010.

Some of these decisions will result in a modification to Ohio's WIA Policy Letters (WIAPLs), Transmittal Letters (WIATLs) or other miscellaneous guidance. Also, some of these decisions will require the program operators to immediately stop enrollments, plan for their RFP processes, or to take other necessary actions.

Approved waivers

DOL approved some of the waivers without any changes. These waivers have already been transmitted in policy, guidance, memo, etc. and include:

- Waiver of 20 CFR 663.530 that prescribes a time limit on the period of initial eligibility for training providers;
- Waiver of 20 CFR 664.510 that prohibits the use of Individual Training Accounts for older and out-of-school youth;
- Waiver of WIA section 136 (b) to permit the state to replace the statutory performance measures with the common measures;
- Waiver of 20 CFR 666 and 667.300 (a) to reduce the collection of participant data for incumbent workers;
- Waiver of WIA Section 133(b) to increase the transfer limit between adult and dislocated worker funding streams to a local area, and
- Waiver of WIA Section 101(8) (C) which requires a 50 percent employer contribution for customized training.

Denied or modified waivers

DOL has denied the following waivers but has approved a transition period so that WIA Areas can complete their commitments to businesses and program participants (i.e. business capitalizations, incumbent worker training contracts, etc.).

1. DOL denied the waiver that allows Areas to provide funds (up to \$5,000) to client entrepreneurs who want to start their own business. However, DOL established a transition period with a deadline of March 31, 2010. This means that Areas can fulfill commitments to participants that are already enrolled in small business development services.

Policy or transmittals affected: WIAPL 08-10.2

State action required: Modify the WIAPL 08-10.2

Area Action required: The Area may provide these funds for participants who are currently enrolled. The Areas may not commit capitalization funds to new participants who want to start their own business. However, the Areas may continue to provide other services to entrepreneurs.

2. DOL modified the request to allow Areas to directly offer the youth program elements of mentoring, summer youth opportunities, tutoring and study skills and leadership development. The Areas can continue to directly offer the youth program elements of supportive services, follow-up and work experience.

Policy or transmittals affected: none

State action required: none

Area action required: The Areas must continue to procure the first list of youth program elements.

3. DOL denied the state's request to recapture and reallocate unspent funds.

Policies or transmittals affected: WIAPL 08-15 and 08-16 will be modified.

State action required: Modify policies. Note: The ARRA funds will still be recaptured and redistributed.

Area action required: Continue to meet expense requirements for ARRA.

4. DOL modified the waiver request for the use of funds for incumbent worker activities. This modification limits the use of formula funds to 10 percent for incumbent worker training that leads to skill attainment for lay-off aversion only. For the adult funds, incumbent worker training is limited to low-income adults. DOL denied the use of converted formula funds for any other use.

Policies or transmittals affected: WIATL 22C will be modified

State action required: Modify policies

Area action required: The Area must not issue new incumbent worker training contracts unless the training is part of a layoff aversion strategy. If an Area has already obligated funds to an employer to train incumbent workers, then they can fulfill their obligations.

Information for all of Ohio's waiver requests can be found in Attachment A. OWD is committed to providing the workforce community with the best information available. If you have further questions, please send them to WIAQNA@jfs.ohio.gov.

Waiver Provision	Anticipated Decision	DOL Decision
<p>1. Waiver of WIA Section 136(b) to permit the state to replace the statutory performance measures with the common measures</p> <p>Allows the state to report only on the common measures, simplifies the reporting system and directly improves overall performance outcomes</p>	<p>Anticipated to be approved as requested</p>	<p><u>Approved</u> as requested</p>
<p>2. Waiver to WIA Section 134(a)(3) to permit use up to 20 percent of Area adult and dislocated worker funds to provide statewide activities, including incumbent worker training</p> <p>Provides broader flexibility for local areas to engage and work with businesses by improving the skills of their employers' workforce and avert layoffs</p>	<p>Anticipated to be denied except for incumbent worker training for layoff aversion <u>only</u>.</p>	<p><u>Modified</u> to allow for incumbent worker training only for lay-off aversion for skill attainment with up to 10% of formula funds. For adult funds, eligibility is limited to low income adults</p>
<p>3. Waiver of WIA sections 128(c), 133(c), and 20 CFR 667.160 for the recapture and reallocation of funds</p> <p>Provides the state with greater flexibility to recapture and reallocate funds and allows for increased efficiency and effectiveness in the management of federal funds</p>	<p>Anticipated that this waiver will be denied</p>	<p><u>Denied</u></p>
<p>4. Waiver of WIA Section 133(b) (4) for fund transfer limitations for the adult and dislocated worker programs</p> <p>Allows the state to approve local area requests to transfer <u>up to</u> 50 percent of their allocations between the adult and dislocated worker programs</p>	<p>Anticipated to be approved as requested</p>	<p><u>Approved</u> as requested</p>
<p>5. Waiver of 20 CFR 664.510 that prohibits the use of Individual Training Accounts (ITAs) for older and out-of-school youth</p> <p>Permits the Areas to provide training to older and out-of-school youth through ITAs and improves the ability of local boards to respond quickly to the needs of youth, increases access to One-Stop services, and improves customer choice</p>	<p>Anticipated to be approved as requested</p>	<p><u>Approved</u> as requested</p>
<p>6. Waiver of 20 CFR 663.530 that prescribes a time limit on the period of initial eligibility for training providers</p> <p>Eliminates the time limit on the period of initial eligibility for training providers, permits Ohio to retain currently approved eligible providers, and provides increased training opportunities for WIA participants</p>	<p>Anticipated to be approved as requested</p>	<p><u>Approved</u> as requested</p>

Waiver Provision	Anticipated Decision	DOL Decision
<p>7. Waiver of WIA Section 123 to allow Areas to directly provide the following youth program elements:</p> <ul style="list-style-type: none"> o Mentoring o Summer employment opportunities o Tutoring and study skills training o Leadership development 	<p>Anticipated to be approved as requested</p>	<p><u>Denied</u> for the listed services.</p>
<p>8. Waiver of WIA Section 101(8) (c) that requires a 50 percent employer match for customized training. Approval of this waiver allows for a sliding scale for match</p> <p>Improves flexibility at the local level, increases the number of employers using customized training, and increases the number of participants receiving customized training</p>	<p>Anticipated to be approved as requested</p>	<p><u>Approved</u> as requested</p>
<p>9. Waiver of Section 133(a)(2) to permit the use of up to 50 percent of rapid response funds for statewide employment and training activities including incumbent worker training</p> <p>Provides greater flexibility to local areas to design and deliver services that meet the needs of their employers, improve worker skills, and avert layoffs</p>	<p>Anticipated to be denied except for incumbent worker training for layoff aversion</p>	<p><u>Modified</u> to allow incumbent worker training only for lay-off aversion, training for skill attainment, 10% transfer of funds</p>
<p>10. Waiver of 20 CFR 666 and 667.300(a) to reduce the data collection of incumbent worker participants</p> <p>Permits the state to minimize the data capture requirements for incumbent workers</p>	<p>Anticipated to be approved as requested</p>	<p><u>Approved</u> as requested</p>
<p>11. Waiver of WIA Section 181(e) to permit the use of WIA funds of up to \$5,000 to capitalize a small business in concert with entrepreneurial training for participants</p> <p>Allows WIA participants who complete enterprise or entrepreneurial training to receive up to \$5,000 in funding to capitalize a small business with measurable outcomes to include the number of new jobs and businesses created</p>	<p>Anticipated to be denied</p> <p>Transition period until March 31, 2010, for capitalization funds</p>	<p><u>Denied</u></p> <p>Transition period until March 31, 2010 for capitalization funds</p>
<p>12. Waiver of common measures for ARRA funded out-of-school youth, ages 18-24 who participate in work experience only outside of the summer months</p> <p>Provides flexibility in program design, increases the number of out-of-school youth enrolled in work experiences, and enhances their job readiness skills</p>	<p>Anticipated to be approved as requested</p>	<p><u>Approved</u> as requested</p>