

INSTRUCTION LETTER

INSTRUCTION NUMBER: 15-04

TO: Upstate Workforce Investment Board Contractors

SUBJECT: Impact of WIOA on Waivers Approved Under WIA

DATE

ISSUED: August 19, 2015

DATE

EFFECTIVE: July 1, 2015

DATE

EXPIRES: Indefinitely

PURPOSE: This guidance addresses the status of previously approved waivers under WIA.

BACKGROUND: The waivers approved by the US Department of Labor (DOL) under WIA did not automatically extend to WIOA, which has its own waiver authority. DOL conducted a waiver-by-waiver analysis to determine which approved waivers may remain in place for Program Year 2015 and which WIA waivers must be terminated on June 30, 2015 due to the effective date of WIOA provisions. Please note that WIA Instruction Letter 14-02 terminated on June 30th which was related to OJT.

The attached listing provides:

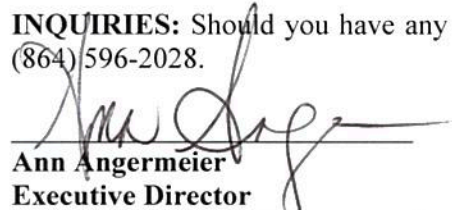
- the WIA waivers that were effective in South Carolina for PY 2014;
- the current status of WIA waivers for PY 2015; and
- the flexibility WIOA offers specific to those waivers.

Note that several previously approved waivers may continue only if supported by PY 2014 funds that were obligated as of June 30, 2015. Local workforce development areas must adapt their use of WIA waivers to ensure compliance with the attached.

Due to the low level of funding, OJT should comply with the current statutory WIOA and regulations without consideration of the waiver. WIOA allows for up to 50% wage reimbursement and grantees should not exceed that percentage with any new OJT contracts.

ACTION: Please ensure that all appropriate staff receive, understand, and adhere to this policy guidance.

INQUIRIES: Should you have any questions concerning this instruction, please contact Dana Wood at (864) 596-2028.


Ann Angermeier
Executive Director
Upstate Workforce Investment Board

Attachment

Source: STATE INSTRUCTION NUMBER 15-04

WIA Waiver Name	Description	PY 2015 Waiver Authority	WIOA Flexibility
Adult/Dislocated Worker Funds Transfer	Waiver of WIA Section 133(b)(4) to increase the allowable transfer amount between local Adult and DW funding streams from 20% to 50%.	Waiver may continue when used in support of activities funded through obligated WIA funds.	Local Board may transfer up to 100% of a program year allocation for adult activities, and up to 100% of a program year allocation for dislocated worker activities between the two programs. Before making any such transfer, Local Board must obtain Governor's written approval.
On-the-Job Training Employer Reimbursement Based on Business Size	Waiver of WIA Section 101(31)(B) to increase employer reimbursement for OJT based on size of the business: 1) up to 90% for employers with 50 or fewer employees, and 2) up to 75% for employers with 51-250 employees. For employers with more than 250 employees, the statutory requirement of up to 50% applies.	Waiver may continue when used in support of activities funded through obligated WIA funds.	Local Board may increase the reimbursement rate for OJT contracts up to 75%, when taking into account the following factors: 1) characteristics of participants taking into consideration whether they are "individuals with barriers to employment," as defined in WIOA sec. 3(24); 2) size of the employer, with an emphasis on small businesses; 3) quality of employer-provided training and advancement opportunities (e.g. OJT contract is for an in-demand occupation and will lead to an industry-recognized credential; and 4) other factors Local Board may determine to be appropriate, which may include number of employees participating, wage and benefit levels of employees (both at present and after completion), and relation of training to the competitiveness of the participant. Local Board must document the factors used when deciding to increase wage reimbursement levels above 50% up to 75%. Based on the above, Local Board must develop a policy regarding OJT reimbursement flexibility.
On-the-Job Training Employer Reimbursement Based on Length of Participant Unemployment	Waiver of WIA Section 101(31)(B) to increase employer reimbursement for OJT based on length of participant's unemployment: 1) up to 90% for individuals unemployed for 28 weeks or more, and 2) up to 75%	Waiver may continue when used in support of activities funded through obligated WIA funds.	Local Board may increase the reimbursement rate for OJT contracts up to 75%, when taking into account the following factors: 1) characteristics of participants taking into consideration whether they are "individuals with barriers to employment," as defined in WIOA sec. 3(24); 2) size of the employer, with an emphasis on small businesses; 3) quality of employer-provided training and advancement opportunities (e.g. OJT contract is for an in-demand occupation and will lead to an industry-recognized credential; and 4) other factors

	for individuals unemployed between 16-27 weeks. For individuals unemployed less than 16 weeks, the statutory requirement of up to 50% applies.		Local Board may determine to be appropriate, which may include number of employees participating, wage and benefit levels of employees (both at present and after completion), and relation of training to the competitiveness of the participant. Local Board must document the factors used when deciding to increase wage reimbursement levels above 50% up to 75%. Based on the above, Local Board must develop a policy regarding OJT reimbursement flexibility.
Employer Contribution for Customized Training	Waiver of WIA Section 101(8)(C) of the required 50% employer contribution for customized training based on size of the business: 1) no less than 10% match for employers with 50 or fewer employees, and 2) no less than 25% match for employers with 51-250 employees. For employers with more than 250 employees, the statutory requirement of 50% contribution applies.	Waiver may continue when used in support of activities funded through obligated WIA funds.	The employer pays for a significant cost of the training, as determined by the Local Board, taking into account the size of the employer and such other factors as the Local Board determines to be appropriate, which may include the number of employees participating in training, wage and benefit levels of those employees (at present and anticipated upon completion of training), relation of the training to the competitiveness of a participant, and other employer-provided training and advancement opportunities. If customized training will be utilized, the Local Board must develop a policy regarding employer cost of Customized Training based on the above.
Local Funds for Incumbent Worker Training	Waiver of WIA Section 134(a) permitting use of local funds for IWT. Local Boards can use up to 10% of local adult and dislocated worker funds for IWT as part of a layoff aversion strategy only.	Waiver may continue when used in support of activities funded through obligated WIA funds.	Local Board can use up to 20% of adult and dislocated worker funds to provide for the federal share of the cost of providing Incumbent Worker training. Incumbent Worker training needs to take into account the following factors: • The characteristics of the participants in the program; • The relationship of the training to the competitiveness of a participant and the employer; and • Other factors the local board may determine appropriate (e.g., the number of employees participating in the training, wage and benefit levels of those employees (both pre- and post-participation earnings)), and the existence of

			other training and advancement opportunities provided by the employer). Employers are required to pay for a significant cost of the training; this can be done through cash and/or in-kind payments. The wages paid to participants, while in training, may be considered as a source of matching funds. Rules for matching funds are provided in the Uniform Guidance and DOL exceptions at 2 CFR 200.306 and 2 CFR 2900.8, respectively. The minimum amount of employer share in Incumbent Worker Training depends on the size of the employer: • At least 10% of the cost, for employers with 50 or fewer employees; • At least 25% of the cost, for employers with 51 to 100 employees; and • At least 50% of the cost, for employers with more than 100 employees. Incumbent Worker Training participants must be included in federal reporting. Therefore, IWT participants must be tracked in SCWOS.
Rapid Response Funds for Incumbent Worker Training	Waiver of WIA Section 134(a)(1)(A) to permit a portion of the funds reserved for rapid response activities to be used for IWT. This waiver allows up to 20% of rapid response funds to be used for incumbent worker training as part of a layoff aversion strategy only.	Waiver may continue when used in support of activities funded through obligated WIA funds.	Rapid response funds may be used for layoff aversion activities that include developing and managing incumbent worker training programs or other worker up skilling approaches.
Collection and Reporting of Data for Locally-Funded and Rapid Response-Funded Incumbent Worker Training	Waiver that allows states and local areas to discontinue collection of 7 WIASRD reporting data elements for incumbent workers.	Approved waiver remains in place since new WIOA reporting requirements will not be fully implemented until June 30, 2016.	

ITAs for Older and Out-of-School Youth	Waiver of 20 CFR 664.510 on the use of Individual Training Accounts (ITAs) for older and out-of-school youth.	Waiver may continue when used in support of activities funded through obligated WIA funds.	In order to enhance individual participant choice in their education and training plans and provide flexibility to service providers, DOL allows WIOA ITAs for out-of-school youth, ages 18 to 24 using WIOA youth funds when appropriate.
Eligible Training Provider List Initial Eligibility	Waiver of the provision at 20 CFR 663.530 that prescribes a time limit on the period of initial eligibility for training providers.	Waiver expired on June 30, 2015.	Training providers previously eligible under WIA Title I will be subject to the application procedure for continued eligibility at the end of the transition period which may extend up to December 31, 2015, or an earlier date as determined by the Governor.
Common Measures	Waiver of WIA Section 136(b) to permit the State to replace the 17 WIA performance measures with the 9 common measures.	Approved waiver remains in place since new WIOA reporting requirements will not be fully implemented until June 30, 2016.	