ALABAMA WORKFORCE INVESTMENT SYSTEM

Department of Commerce
Workforce Development Division
401 Adams Avenue
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October 29, 2015

GOVERNOR'S WORKFORCE INNOVATION DIRECTIVE NO. PY2015-04

SUBJECT: Training and Employment Guidance Letter (TEGL) WIOA – Operations Guidance for Waivers approved under WIA

1. Purpose. This transmits the following TEGL WIOA:

Number	Date	Subject
1-15	07/01/15	Operational Guidance Regarding the Impact of Workforce Innovation and Opportunity Act Implementation on Waivers Approved Under the Workforce Investment Act

2. Discussion. The purpose of TEGL WIOA No. 1-15 is to communicate the Employment and Training Administration's (ETA) waiver policy for PY 2015 for Workforce Investment Act (WIA) waivers currently approved for many states. This guidance addresses the status of such waivers during Program Year (PY) 2015, when most provisions of the Workforce Innovation and Opportunity Act (WIOA) go into effect. This guidance also communicates ETA's position on waivers under WIOA.

TEGL WIOA No. 1-15 provides individual guidance for different waivers, and some of this guidance applies to waivers granted to the State of Alabama. They include:

1. Waiver of WIA Section 133(b)(4) to increase the allowable transfer amount (to up to 50 percent) between Adult and Dislocated Worker funding streams allocated to a local area. This waiver continues through June 30, 2017 for activities funded through obligated WIA funds. Please note that although this waiver extends through June 30, 2017, it does not apply to WIOA funds, which allows up to one hundred (100) percent transfer between Adult and Dislocated Worker funding streams.

2. Waiver to permit the state to replace the performance measure at WIA Section 136(b) with the common measures. This waiver continues until new WIOA reporting requirements are fully implemented. New WIOA reporting requirements are scheduled to be implemented by June 30, 2016.

3. Waiver of WIA Section 134(a) to permit local areas to use a portion of local funds for incumbent worker training. This waiver continues through June 30, 2017 for incumbent worker activities funded through obligated WIA funds. However, since no WIA funds were obligated for local incumbent worker activities when WIA ended on June 30, 2015, this waiver cannot be used.

4. Waiver of WIA Section 134(a)(1)(A) to permit a portion of the funds reserved for rapid response activities to be used for incumbent worker training. This waiver continues through June 30, 2017 for incumbent worker activities funded through obligated WIA funds.

5. Waiver of WIA Section 101(31)(B) to increase the employer reimbursement for on-the-job training. This waiver continues through June 30, 2017 for on-the-job training activities funded through obligated WIA funds. Please note that although this waiver extends through June 30, 2017, it does not apply to WIOA funded on-the-job training activities.

6. Waiver of the prohibition at 20 CFR 664.510 on the use of Individual Training Accounts (ITAs) for older and out-of-school youth. This waiver continues through June 30, 2016 for activities funded through obligated WIA funds. Please note that although this waiver extends through June 30, 2016, it does not apply to WIOA funded activities.

7. Waiver of WIA Section 123 that requires that providers on Youth program elements be selected on a competitive basis. This waiver continues through June 30, 2016 for activities funded through obligated WIA funds. Please note that although this waiver extends through June 30, 2016, it does not apply to WIOA funded activities.

The State of Alabama currently has no other active waivers, and ETA indicates in TEGL WIOA No. 1-15 that it does not anticipate a need for waivers in Program Year 2016.

3. Action. This Directive should be distributed accordingly to local areas, workforce staff, and partners. Local area staff should use the guidance provided in TEGL WIOA No. 1-15 and this Directive concerning waivers as they operate workforce programs.

4. Contact. Questions or comments concerning this Directive should be referred to Lorilei Sanders, State Programs, Planning, and Divisional Budget Management Section at (334) 353-1632 or lorilei.sanders@commerce.alabama.gov.

Steve Walkley, Division Chief
Workforce Development Division
Alabama Department of Commerce

10/24/2015
Date

Attachment
TEGL WIOA No. 1-15

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION WIA and WIOA waivers
	CORRESPONDENCE SYMBOL OWI
	DATE July 1, 2015

ADVISORY: **TRAINING AND EMPLOYMENT GUIDANCE LETTER WIOA NO. 1-15 OPERATING GUIDANCE for the WORKFORCE INNOVATION AND OPPORTUNITY ACT (referred to as WIOA or the Opportunity Act)**

TO: STATE WORKFORCE AGENCIES
STATE WORKFORCE ADMINISTRATORS
STATE WORKFORCE LIAISONS
STATE AND LOCAL WORKFORCE BOARD CHAIRS AND DIRECTORS
STATE LABOR COMMISSIONERS

FROM: PORTIA WU
Assistant Secretary

SUBJECT: Operations Guidance Regarding the Impact of Workforce Innovation and Opportunity Act Implementation on Waivers Approved Under the Workforce Investment Act.

1. **Purpose.** The purpose of this guidance is to communicate the Employment and Training Administration's (ETA) waiver policy for PY 2015 for Workforce Investment Act (WIA) waivers currently approved for many states. This guidance addresses the status of such waivers during Program Year (PY) 2015, when most provisions of the Workforce Innovation and Opportunity Act (WIOA) go into effect. This guidance also communicates ETA's position on waivers under WIOA.

   WIOA was signed into law on July 22, 2014. WIOA is designed to help job seekers access employment, education, training, and support services to succeed in the labor market and to match employers with the skilled workers they need to compete in the global economy. WIOA supersedes Titles I and II of the Workforce Investment Act of 1998 and amends the Wagner-Peyser Act and the Rehabilitation Act of 1973. In general, the Act takes effect on July 1, 2015, the first full program year after enactment, unless otherwise noted.

   The Departments of Labor and Education published a set of regulations for implementing WIOA through the posting of five Notice of Proposed Rulemaking (NPRMs) documents. These NPRMs were open for public comment until June 15, 2015, and several hundred comments were received by both Departments. The Federal agencies will review, analyze and consider the comments received. The Final WIOA rules will be issued in 2016.

RESCISSIONS	EXPIRATION DATE
None	Continuing

In order to continue implementation prior to the final rule, a series of WIOA Operating Guidance documents are being issued in the form of Training and Employment Guidance Letters (TEGLs). These Operating Guidance documents on WIOA will inform the workforce system on how to begin the important planning and organizational work necessary to comply with the WIOA statutory requirements. The Operating Guidance TEGLs will provide a framework for program activities until the regulations are finalized. This TEGL is one in a series of WIOA Operating Guidance.

2. **References.** See Attachment I.

3. **Background**. Before the passage of WIOA, ETA approved WIA State Plans and waivers through either June 30, 2016 or June 30, 2017. Most WIOA provisions go into effect July 1, 2015, and States must submit WIOA State Plans in March 2016 for PY 2016. The Secretary's waiver authority under WIA and waivers approved under WIA do not extend to WIOA, which has its own waiver authority.

   ETA conducted a waiver-by-waiver analysis to determine which approved WIA waivers may remain in place for PY15 and which WIA waivers must be terminated on June 30, 2015 due to the effective date of the WIOA provisions. Section 503 of WIOA provides the Secretary of Labor with the authority to take such actions as the Secretary determines to be appropriate to provide for the orderly transition from WIA to WIOA, and ETA is exercising this authority in regard to waiver decisions articulated in this guidance.

   Furthermore, policy promulgated in TEGL 38-14, *Operational Guidance to Support the Orderly Transition of Workforce Investment Act Participants, Funds, and Subrecipient Contracts to the Workforce Innovation and Opportunity Act of 2014*, establishes the analytical framework for the continuation of certain WIA waivers into PY 15. In particular, the following provides the context for WIA waiver policy for PY 15:

   - For PY 2013 and 2014 funds which are already obligated as of June 30, 2015, grantees may liquidate those obligations in compliance with WIA requirements.
   - As of July 1, 2015, unobligated WIA funds carried into WIOA must only support WIOA activities and conform to WIOA reporting requirements.
   - On July 1, 2015, all WIA title I participants (including Adult, Dislocated Worker, Youth, NFJP, and INA participants) who were enrolled in a WIA title I program prior to July 1, 2015 must be grandfathered into WIOA, even if the participant would not otherwise be eligible for WIOA.
   - For performance reports, State formula grantees will continue reporting WIA and WIOA enrolled participants in the current Workforce Investment Act Standardized Record Data (WIASRD) until a new performance report is approved and the system is updated.

4. **Status of Approved WIA Waivers in PY 15.** Most waivers are organized into the following categories: those having to do with the flexibility and movement of funds, including youth waivers, waivers of performance, and waivers that impact State or local governance structures. The following summarizes the Department's rationale for the status of

WIA waivers in these categories. Please see Attachment II for a full list of waiver decisions. Through the Secretary's transition authority, States are not required to submit a WIA State Plan modification to reflect these changes, nor will the Department issue waiver modification letters outside of this guidance.

A. **Funds Flexibility and Youth Waivers.** Whether WIA Funds Flexibility and Youth Waivers remain in effect after July 1, 2015 varies based on whether WIA funds are obligated or unobligated as of June 30, 2015.

   Funds flexibility waivers (such as the waiver allowing a sliding employer reimbursement scale for on-the-job training) and Youth waivers (including the competitive procurement of youth elements waiver and the waiver to allow youth to receive ITAs) that support activities funded with obligated PY 2013 or 2014 funds may continue until such funds are liquidated. Unobligated PY 2013 and 2014 will become subject to WIOA requirements, effective July 1, 2015 and the WIA waivers must be discontinued. ETA intends to issue further guidance regarding competitive procurement of the youth elements.

   Note, participants enrolled under WIA prior to July 1, 2015 must be grandfathered into WIOA and must be allowed to complete the WIA services in their service plan whether using WIA or WIOA funds for those services.

B. **Performance Waivers.** WIOA performance reporting requirements do not take effect until PY 2016. Therefore, ETA will continue to honor all currently approved WIA performance waivers, including waivers that permit States to replace the performance measures at WIA Section 136(b) with the common measures until PY 2016. State formula grantees will continue reporting WIA and WIOA enrolled participants in the current Workforce Investment Act Standardized Record Data (WIASRD) until a new performance report is approved and the system is updated.

C. **System Governance Waivers.**

   i. **Waiver of 20 CFR 661.300(f) permitting the State Board to carry out the functions of the Local Board**. The three States that are approved for this waiver may continue the waiver in PY 2015. Irrespective of the waiver, these States must develop policies concerning the identification of regions and the designation of local areas consistent with TEGL 27-14. States approved for this waiver must educate local chief elected officials of their statutory authority to request local area designation. ETA will entertain such a waiver under WIOA on a case-by-case basis where the State can provide compelling evidence that the continuation of this governance structure is necessary and appropriate. ETA intends to issue further guidance on the conditions and criteria for approval of this waiver under WIOA.

   ii. **Waiver of the provision at 20 CFR 663.530 that prescribes a time limit on the period of initial eligibility for training providers.** This waiver allowed States to maintain initial eligibility requirements for training providers. The WIOA

requirements for training provider eligibility go into effect July 22, 2015, and this waiver may not be applied to the Section 122 provisions of WIOA. Therefore, this waiver is discontinued effective July 1, 2015. For information on training provider eligibility requirements under WIOA, refer to TEGL 41-14.

5. **Waivers in PY 2016.** In general, the Department does not envision a need for States to request waivers before the submission of the first WIOA State Plan in March of 2016. WIOA represents a significant opportunity for the transformation of the public workforce system, in part due to the unprecedented level of flexibility that the legislation provides State and Local stakeholders. We encourage States to work with, and test the flexibility of WIOA, particularly during PY 2015, the first year of implementation. However, where the State demonstrates that a proposed waiver would lead to a true innovation or improve service delivery beyond the improvements provided for in WIOA, the Department will entertain waiver requests prior to State Plan submission. The State must articulate how the proposed waiver would advance implementation of its prospective WIOA State Plan.

6. **Action Requested.** States must review this guidance against their approved WIA waivers, and adapt their use of WIA waivers accordingly. States are not required to submit a State Plan modification to reflect these changes.

7. **Inquiries.** States should address their inquiries to their ETA Regional Office.

8. **Attachments.**

   - Attachment I: References
   - Attachment II: Table of WIA Waiver Decisions for PY 2015

Attachment I: References

- Workforce Investment Act of 1998 (Pub. L. 105-220)
- Workforce Innovation and Opportunity Act of 2014 (Pub. L. 113-128)
- TEGL 27-14: *Workforce Innovation and Opportunity Act Transition Authority for Immediate Implementation of Governance Provisions*
- TEGL 38-14: *Operational Guidance to Support the Orderly Transition of Workforce Investment Act Participants, Funds, and Subrecipient Contracts to the Workforce Innovation and Opportunity Act of 2014*
- TEGL 41-14: *Workforce Innovation and Opportunity Act (WIOA or Opportunity Act) Title I Training Provider Eligibility Transition*

Attachment II:

Waiver Decisions for PY 2015

WIA Waiver Name	Description	PY 2015 Waiver Decisions
Customized Training	Waiver of the required 50 percent employer contribution for customized training at WIA Section 101(8)(C)	Waiver may continue when used in support of activities funded through obligated WIA funds.
On-the-job Training Employer Reimbursement Based on Business Size	Waiver of WIA Section 101(31)(B) to increase the employer reimbursement for on-the-job training	Waiver may continue when used in support of activities funded through obligated WIA funds.
On-the-job Training Employer Reimbursement Based on Length of Participant Unemployment	Waiver of WIA Section 101(31)(B) to increase the employer reimbursement for on-the-job training	Waiver may continue when used in support of activities funded through obligated WIA funds.
Adult/Dislocated Worker Funds Transfer	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	Waiver may continue when used in support of activities funded through obligated WIA funds.
Local funds for incumbent worker training	Waiver of WIA Section 134(a) to permit local areas to use a portion of local funds for incumbent worker training	Waiver may continue when used in support of activities funded through obligated WIA funds.
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 incumbent worker training	Waiver may continue when used in support of activities funded through obligated WIA funds
Youth ITAs	Waiver of the prohibition at 20 CFR 664.510 on the use of Individual Training Accounts for older and out-of-school youth	Waiver may continue when used in support of activities funded through obligated WIA funds.
Competitive Procurement for Youth Elements	Waiver of WIA Section 123 that requires that providers of Youth program elements be selected on a competitive basis	Waiver may continue when used in support of activities funded through obligated WIA funds.
Common Measures	Waiver to permit the State to replace the performance measures at WIA Section 136(b) with the common measures	Approved waivers remain in place since new WIOA reporting requirements will not be fully implemented until June 30, 2016.

OJT Credential Attainment	Waiver of the WIA regulations at 20 CFR 666.100 to exempt the State from including credential attainment outcomes for participants enrolled in on-the-job training in the credential performance measure calculations	Approved waivers remain in place since new WIOA reporting requirements will not be fully implemented until June 30, 2016.
Alternative Seasonal Performance Measure	Waiver to permit WIA participants who enter seasonal employment occupations to be counted in an alternative format for performance measures at WIA Section 136(b)(2)(A)(i)(II) and 20 CFR 666.140	Only applies to Alaska. Approved waiver will remain in place since new WIOA reporting requirements will not be fully implemented until June 30, 2016.
WIASARD Element for Incumbent Worker Training	Waiver to allow States to discontinue collection of 7 WIASRD data elements for incumbent workers	Approved waivers remain in place since new WIOA reporting requirements will not be fully implemented until June 30, 2016.
Local Area Performance Measure Indicators and Methodology	Waiver of WIA Section 136(c) to allow greater flexibility when contracting performance measures with local workforce boards. The waiver permits the State to use Local Board-contracted measures that support integration. Under this waiver, the State continues to meet applicable State performance requirements at WIA Section 136(b).	Approved waivers remain in place since new WIOA reporting requirements will not be fully implemented until June 30, 2016.
State Board as Local Board	Waiver of WIA regulations at 20 CFR 661.300(f) to allow the State Board to carry out the roles of a Local Board	Waiver will continue through June 30, 2016.
Board Membership	Waiver of the State Workforce Board membership requirements at WIA Section 111(b)	Only applies to Rhode Island. Waiver no longer necessary. WIOA requires the appointment of representatives from each house of the State legislature in accordance with State law.
ETPL 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 expires on June 30, 2015.
One-Stop Intake	Waiver of WIA regulations 20 CFR 662.240(b)(10) to allow One-Stop Career Center staff to perform intake and eligibility determination for additional programs.	Waiver will continue through June 30, 2016.
Required Statewide Activities	Waiver of WIA Sections 129(b)(2) and 134(b)(2) to exempt the State from some statewide activities.	Waiver expires on July 1, 2015.

Reallocation Waiver	Waiver of the reallocation provisions at WIA Sections 128(c)(2) and 133(c)(2), and 20 CFR 667.160(b). This waiver provides the State with greater discretions when reallocating recaptured funds.	Only applies to Texas. Waiver will continue through June 30, 2016.