

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION WIA Waivers
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TO: STATE WORKFORCE AGENCIES
STATE WORKFORCE LIAISONS
OTHER (As applicable)

FROM: BRENT R. ORRELL *Brent R. Orrell*
Deputy Assistant Secretary

SUBJECT: Use of the Workforce Investment Act of 1998 (WIA) Flexibility in Economic Recovery

1. **Purpose.** The purpose of this Training and Employment Guidance Letter is to describe common waivers to the Workforce Investment Act of 1998 (WIA) and the Wagner-Peyser Act that may assist states as they develop economic recovery strategies.
2. **References.**
 - The Workforce Investment Act of 1998
 - WIA Section 189(i)(4) (waiver authority)
 - WIA Section 192 (work-flex)
 - 20 CFR 661.420-430 (regulatory text on waivers)
3. **Background.** Section 189(i)(4) of WIA authorizes the Secretary to waive certain statutory and regulatory provisions of WIA and of the Wagner-Peyser Act. This general statutory and regulatory waiver authority provides increased flexibility to states and local areas, and provides an opportunity for states and localities to organize services in ways that best meet the needs of the state, regional, and local economy.

As states develop economic recovery strategies and serve workers and employers impacted by the economic downturn, the Employment and Training Administration (ETA) encourages states to consult with local partners to identify any barriers that may stand in the way of innovative and effective responses. ETA regional staff and national office program staff are available to discuss how waivers might be used to overcome legal or regulatory barriers related to WIA. For example, states serving

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large numbers of individuals with limited labor force attachment or experiencing increased layoffs, may benefit from a waiver that permits a funds transfer between adult and dislocated worker funding streams.

Similarly, states that identify a need for statewide retraining in new industry sectors and occupations may benefit from a waiver that allows local and rapid response funds to be used for statewide service delivery demonstrations that target a particular need.

Please note that WIA prohibits waivers for certain WIA and Wagner-Peyser provisions including wage and labor standards, allocation of funds to local areas, eligibility of participants and providers, the establishment and functions of local areas and local workforce investment boards, and procedures for review and approval of plans, as described at WIA Section 189(i)(4)(A).

4. **Waivers.** The list below features routinely approved waivers that states may want to utilize as they implement new workforce strategies or adjust current strategies to assist workers and employers in an economic downturn. States may also wish to request waivers of provisions that are not listed below. Information on requesting waivers can be found at www.doleta.gov/waivers.

The U.S. Department of Labor has routinely approved the following waivers:

Adult and Dislocated Worker Program Funds Transfer. Waiver of the funds transfer limitation at WIA Section 133(b)(4) to permit states to approve local area requests to transfer more than 30 percent (as allowed through provisions in the Department of Labor's annual Appropriations Acts) of local area formula allocation funds between the WIA Adult and Dislocated Worker programs, up to 100 percent.

This waiver is useful for targeting funds to areas of local need. States with an approved waiver have the opportunity to encourage local areas to exercise the option to transfer funds as needed; states that do not have the waiver may want to consider submitting a request. States with less than 100 percent flexibility may want to consider submitting a waiver request to raise the transfer limit.

The following states currently have an approved waiver in the amount listed: AK, AL, AZ, CA, CO, DC, FL, GA, GU, HI, IA, IN, KS, KY, LA, MD, MN, MO, MS, NC, NE, NH, NJ, NM, NV, PA, PR, SD, TN, TX, UT, VA, WI, WY (100 percent); MA, OH, SC, TN, WV (50 percent); AR, NY, and VI (40 percent).

Reallocation Flexibility. Waiver of the reallocation provisions at WIA Sections 128(c)(2) and 133(c)(2), and 20 CFR 667.160, to provide states with additional flexibility in the targeting of WIA funds.

Under the waiver, states have been permitted to implement one or more of the following features: 1) mid-year deobligation and reallocation of local area funds; 2) use of recaptured funds from local areas for statewide activities identified in WIA section 134(a) by the state or reallocation to other eligible local areas; and 3) use of additional factors in determining local area eligibility for a reallocation of recaptured funds, including demonstrated need and ability to use additional funds.

The following states have been approved for this type of waiver: AL, CO, FL, KS, LA, MI, MN, MO, MS, NC, OH, PA, TN, TX, and VA.

Use of Local Funds for Statewide Activities. Waiver to permit local areas to request the use of a portion of local area formula funds for adults and dislocated workers to provide statewide activities identified at WIA Section 134(a).

WIA limits the authority to provide the activities at WIA Section 134(a) to the state, so a waiver of this provision permits local areas to use a portion of local formula funds to conduct activities identified as statewide employment and training activities under the statute. Historically, the Department of Labor has approved the use of up to 50 percent of local area funds in this manner. This waiver can be effective in targeting funds to priority initiatives. Some local areas are conducting incumbent worker training under the state's approved waiver; other states have asked and been granted the flexibility to conduct the full range of allowable statewide activities.

The following states have been granted this type of waiver: AL, AR, CA, CO, CT, DC, FL, ID, IL, IN, KS, KY, LA, MA, MD, MI, MN, MO, MS, MT, NC, NJ, NM, NY, OH, OK, OR, PA, PR, SC, TX, UT, VA, and WI.

Use of Rapid Response Funds for Statewide Activities. Waiver to permit the use of a portion of the funds reserved for rapid response activities in 134(a)(1)(A) to provide other required and allowable statewide activities in WIA Section 134(a)(1)(B).

This waiver allows states to use rapid response funds more flexibly and for a wider range of activities, including incumbent worker training. Historically, the Department has approved the use of up to 50 percent of rapid response funds in this manner.

The following states have been approved for this waiver: AL, FL, ID, IN, KS, KY, LA, MA, MI, MN, MO, NC, NY, OH, OR, PA, PR, SC, TN, TX, VA, and VI.

Youth Training. Waiver of the regulatory prohibition on use of Individual Training Accounts (ITA) for older and out-of-school youth (20 CFR 664.510).

This waiver provides states with flexibility in provision of training services to youth. The following states have been approved for this waiver: AK, AR, CA, CT, FL, GA, IL, IN, KS, KY, LA, MA, MD, MN, MO, MS, NJ, NM, NY, OH, OK, PA, PR, RI, TN, TX, UT, VA, VI, and WV.

Employer Match for Customized Training. Waiver of the required 50 percent employer match for customized training at WIA Section 101(8)(C).

This waiver allows local areas to offer a sliding scale match based on criteria developed by the state. The following states have been approved for this waiver: AL, AR, AZ, CA, GU, HI, IA, KY, LA, MN, MO, MS, NJ, OH, OK, PA, PR, RI, SC, TX, and VI.

Employer Reimbursement for On-the-Job Training. Waiver of the employer reimbursement for on-the-job training at WIA Section 101(31)(B) for impacted businesses and businesses training affected individuals.

This waiver increases a state's flexibility in connecting employers with jobseekers by reimbursing employers for extraordinary costs of providing on-the-job training. The following states have been approved for this waiver: AL, AR, KS, IA, IL, LA, MO, MS, PA, SC, TX, and VI.

5. **Work-Flex.** Work-flex authority allows governors to waive certain statutory or regulatory requirements under Title I of WIA and Sections 8 through 10 of the Wagner-Peyser Act applicable to local areas, when local areas submit a plan requesting such waivers. Work-flex authority is not only applicable to provisions of WIA and the Wagner-Peyser Act, but is also applicable to certain provisions of the Older Americans Act for the Senior Community Service Employment Program (SCSEP). Once the work-flex waiver authority has been granted, a governor can approve waivers for local areas without having to come back to the Secretary for permission. The following states have work-flex authority: AL, LA, MI, MO, MS, and OK.
6. **Wagner-Peyser Act Waivers.** Although there is a narrower range of provisions subject to the Department's waiver authority for the Wagner-Peyser Act and its regulations, there are opportunities for waivers. The Department approved a waiver of WIA and the Wagner-Peyser Act for the State of Florida to allow WIA or Wagner-Peyser funded staff in a One-Stop Career Center to provide intake for partner programs such as Food Stamp Employment and Training and Temporary Aid to Needy Families without having to cost allocate staff time for each respective program.

The waiver authority extends to Sections 8-10 of the Wagner-Peyser Act. The Department cannot waive the merit-staffing provisions of Wagner-Peyser Act, its

provisions relating to the provision of basic labor exchange services free of charge, nor its provisions governing services to unemployment insurance claimants and veterans.

7. **Waiver Request Process.** In order to request a waiver, a state should submit a waiver plan, which may include one more waiver requests. A state may submit a waiver plan with its strategic State Plan, or at any time after submission of the State Plan. For each waiver request, the waiver plan should include the following:
 - A. The statutory and/or regulatory requirements for which a waiver is requested;
 - B. A description of the actions the state or local area has undertaken to remove state or local barriers;
 - C. A description of the:
 - Goals of the waiver,
 - Relationship of the goals to the strategic plan goals, and
 - Expected programmatic outcomes;
 - D. A description of the individuals impacted by the waiver; and
 - E. A description of the processes used to:
 - Ensure meaningful public comment, including comment from business and labor,
 - Provide notice to any local board affected by the waiver,
 - Provide affected local boards opportunity to comment, and
 - Monitor implementation.
8. **Action Requested.** States are encouraged to examine existing approved waivers, to consider how waivers can support the state's strategic economic recovery efforts, and to consult with their state FPO and request additional waivers as needed.
9. **Inquiries.** States should address their inquiries to their ETA regional office. General inquiries about waivers may be addressed to WIA.Plan@dol.gov.