



Department of Labor and Workforce Development

Division of One-Stop Coordination & Support

Workforce Investment Act (WIA) Waiver Summaries

Prepared February 18, 2010

Please note: Each time a WIA Waiver is applied, a copy of the Waiver must be included along with the appropriate paperwork in the client file. It is also recommended that you maintain a record of which waiver(s) are used and the frequency of application for each waiver. If you have any questions regarding use of these waivers please contact Gary Altman, Director, Division of One-Stop Coordination and Support, at (609) 292-8852.

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WIA Waiver Requests NJ – PY 2009				
# of Requests	Waiver	Type of Request	Description	USDOL Approval Date
1	Customized Training Match	Extension	<p>New Jersey requested a waiver of the requirement of the 50% employer match for Customized Training as identified in WIA 101 (8) (C), to provide the flexibility to use federal funds where our own state funds are not viable in providing customized training for up to 10 individuals at the onset of a workforce relationship. By removing the requirement of a 50% employer match towards the cost of training, local boards will be able to more effectively market WIA-funded customized training to the private sector in support of building relationships with employers in the demand-growth industry. The amount of an individual employer's match will be determined at the discretion of the One-Stop Operator, based on the size and need of the employer to a maximum of 10 individuals in a demand-growth occupation.</p> <p>Under the waiver the following sliding scale is permitted: 1) no less than 10 percent match for employers with 50 or fewer employees, and 2) no less than 25 percent match for employers with 51-250 employees. For employers with more than 250 employees, the current statutory requirements (50 percent contribution) continue to apply. When determining the funding source for customized training, the state must use the appropriate funds for the WIA-eligible population. The State may provide customized training to low-income adults with WIA Adult funds, and may provide customized training to dislocated workers with WIA Dislocated Worker funds. Customized training provided with statewide funds must serve WIA eligible individuals.</p>	11/12/2009

WIA Waiver Requests NJ – PY 2009				
# of Requests	Waiver	Type of Request	Description	USDOL Approval Date
2	Adult-DW funds transfer	Extension	<p>New Jersey requested a waiver of the statutory and regulatory requirements at WIA Section 133 (b) (4) and WIA Regulations at 667.140 stipulating that a local board may transfer, if such transfer is approved by the governor, not more than 20 percent of the funds allocated to Adult and Dislocated Worker employment and training activities. New Jersey under WIA had received prior waiver approvals for transfer of 50 percent of funds in 2005 and 100 percent in 2006.</p> <p>New Jersey requested that the Governor be given authority to approve a request from the local board to transfer up to 50 percent of a program year allocation for adult employment and training activities and up to 50 percent of a program year allocation for dislocated worker employment and training program activities between the two programs for WIA funding.</p> <p>The goal to be achieved by the waiver is to increase local flexibility in allocating and expending WIA Adult and Dislocated Worker funds. Increasing the transfer authority will allow local areas to respond to changes in the local labor market as well as the changing needs of the business community. The programmatic impact will be the flexibility to channel resources to the population with the greatest need at that time, thereby providing efficient and timely usage of available WIA funds. The programmatic impact will be the flexibility to channel resources to the population with the greatest need at that time, thereby providing efficient and timely usage of available WIA funds. Also, this waiver is consistent with one of the improvements that the Administration is seeking in the reauthorization of WIA – the consolidation of the WIA Adult and Dislocated Worker funding streams, clearly allowing local areas the necessary flexibility to handle their funding needs more efficiently and more in keeping with each area’s specific needs.</p>	11/12/2009

WIA Waiver Requests NJ – PY 2009				
# of Requests	Waiver	Type of Request	Description	USDOL Approval Date
3	Incumbent Worker Training	Extension	<p>New Jersey requested a waiver at WIA section 133 (b) of the restrictions on the use of local area WIA funds for Incumbent Worker Training at the local area level. The waiver would allow local Workforce Investment Boards to spend up to 10 percent of funds allocated to a local area under section 133 (b) to carry out incumbent worker training programs targeting employed workers earning below self-sufficiency.</p> <p>(Note: New Jersey also requested a waiver of the performance measurement of a wage increase for adults who are employed but earn below self-sufficiency. That request was denied).</p>	11/12/2009

WIA Waiver Requests NJ – PY 2009				
# of Requests	Waiver	Type of Request	Description	USDOL Approval Date
4	Youth ITAs	Extension	<p>New Jersey requested a waiver from 20 CFR 664.510 to allow older youth, when appropriate, to select approved ITA programs from the New Jersey's Eligible Training Provider List while retaining their youth classification. The goals of this waiver are as follows: 1) to provide an additional training option that allows for increased customer choice. With the availability of ITAs for older youth more of these customers can achieve educational and occupational goals without the additional barrier of having to meet adult or dislocated worker eligibility requirements; 2) to remove the need for co-enrollment of older youth accessing ITAs as adult or dislocated workers. This will eliminate duplicative paperwork and tracking requirements; and 3) to foster improvement in the expenditures for out-of-school youth towards meeting the federal mandate to expend 30 percent of youth funds for this population. It is expected that the utilization of ITAs for older youth will have a positive impact on the local area's ability to meet or exceed performance goals of this population.</p> <p>New Jersey also requested that in areas where the traditional competitive procurement process for identifying eligible providers has been exhausted an additional process be instituted that allows local areas to directly negotiate with appropriate public entities such as community colleges to design effective programs that will meet the local needs of provision of youth services. In the event that procurement does not produce the services deemed essential for demand-growth occupations, the ability for local boards to negotiate directly with public entities in this process will promote increased flexibility at the local level and support the demand-driven programs for youth. The process to be adopted is to be consistent with N.J. Local Public Contracts Law at N.J.S.A. 40A:11-5 which states the process by which exceptions can be made to the requirement for competition.</p>	6/18/2009

WIA Waiver Requests NJ – PY 2009				
# of Requests	Waiver	Type of Request	Description	USDOL Approval Date
5	Youth Summer Providers ARRA	New	<p>New Jersey requested a waiver pursuant to WIA Section 123 to give the local workforce investment areas greater flexibility and access to the eligible training providers. Under this waiver, local areas would be allowed to use existing contracts to provide summer youth work experience programs funded under the Recovery Act rather than going through an entirely new procurement process. The short timeframe for 2009 summer youth implementation requires the State and local areas to begin planning immediately, to be more responsive to the customers, and to administer training more expeditiously. This waiver would have a positive outcome on the ability of the State and the local areas to achieve their work readiness requirements.</p> <p>The waiver would only apply to the summer employment program and only for the summer of 2009. It would only be applicable for Recovery Act funding to expand existing competitively procured contracts.</p>	5/22/2009

WIA Waiver Requests NJ – PY 2009				
# of Requests	Waiver	Type of Request	Description	USDOL Approval Date
6	OJT Performance Measures	New	New Jersey requested a waiver at WIA Regulations 666.100 (a) (1) (iv) for Adults, 666.100 (a) (2) (iv) for Dislocated Workers, 666.100 (a) (3) (i) A for eligible youth aged 14 through 18, and 661.100 (a) (3) (ii) (D) for eligible youth aged 19 through 21, to exclude individuals who are participating in the On the Job Training (OJT) program services from inclusion in WIA performance measures standards. This would give the local workforce investment areas greater flexibility and access to use of the OJT program without negatively impacting upon performance standards. It allows the training program design to be more responsive to employer and the employee needs as it can be specifically created for that industry, business or worksite. Eliminating the performance measures reporting requirement for those participating in the OJT program will encourage its use and have a positive effect on training outcomes. Under the waiver credential attainment data should still be collected, and Workforce Investment Act Standardized Record Database (WIASRD) item 619, Type of Recognized Credential, should be completed for each individual enrolled in on-the-job training.	11/12/2009

WIA Waiver Requests NJ – PY 2009				
# of Requests	Waiver	Type of Request	Description	USDOL Approval Date
7	Youth Performance Measures ARRA	New	<p>New Jersey requested a waiver at WIA Section 136 (b) (2) (A) (ii) and 136 (c) (1) (A) (i) plus CFR 666.100 (a) (3) (i) and (ii) to facilitate the implementation of WIA Youth Services under the ARRA and support the intent of Congress to serve out-of-school youth aged 18-24 year olds through work experience. The short timeframe for 2009 summer youth implementation requires the State and local areas to begin planning immediately and to be more responsive to the customers. This waiver would have a positive outcome on the ability of the State and the local areas to achieve their work readiness requirements under the ARRA.</p> <p>The waiver would only apply to out-of-school youth aged 18-24 who participate in work experience and would only be applicable for the first six months following the summer of 2009 (i.e., October 2009 to March 2010). It would only be applicable for ARRA funding.</p>	9/30/2009

WIA Waiver Requests NJ – PY 2009				
# of Requests	Waiver	Type of Request	Description	USDOL Approval Date
8	Transfer Program Funds ARRA	New	<p>New Jersey requested a waiver at WIA Section 133 (b) (4) and WIA Regulations at 667.140 that the Governor be given authority to approve a request from the local board to transfer up to 30 percent of a program year allocation for adult employment and training activities and up to 30 percent of a program year allocation for dislocated worker employment and training program activities between the two programs for ARRA funding.</p> <p>The goal to be achieved by the waiver is to increase local flexibility in allocating and expending ARRA Adult and Dislocated Worker funds. Increasing the transfer authority will allow local areas to respond to changes in the local labor market as well as the changing needs of the business community. The programmatic impact will be the flexibility to channel resources to the population with the greatest need at that time, thereby providing efficient and timely usage of available ARRA funds.</p>	11/12/2009 with a 30% maximum

WIA Waiver Requests NJ – PY 2009				
# of Requests	Waiver	Type of Request	Description	USDOL Approval Date
9	Rapid Response ARRA Incumbent Worker Training	New	New Jersey requested a waiver of the statutory and regulatory requirements at WIA Section 133 (b) to carry out incumbent worker training programs under ARRA, which target currently employed workers in order to retain their employed status. The goal of the waiver is to provide continued employment for incumbent workers. TEGL 14-08 states that rapid response is a critical strategy in a time of economic downturn. The TEGL further states that incumbent worker training can be an effective layoff aversion component of a state's rapid response effort. This waiver intends to increase the state's effectiveness and impact by utilizing incumbent worker training as an effective layoff aversion strategy.	11/12/2009

WIA Waiver Requests NJ – PY 2009				
# of Requests	Waiver	Type of Request	Description	USDOL Approval Date
10	OJT Match	New	<p>New Jersey requested a waiver to change the required 50 percent employer contribution for On-the-Job Training (OJT) at WIA 101 (8) (C) & (31) (B) to a contribution based on a sliding scale, ranging from 10 percent to 50 percent for the employer contribution based on the employer's size. Specially, The New Jersey Department of Labor & Workforce Development (LWD) shall establish the required portion of the costs, which shall not be less than 10 percent of the costs for employers with 50 or fewer employees, 25 percent of the costs for employers with between 51 and 100 employees, and 50 percent of the costs for employers with more than 100 employees. This waiver will apply to Program Year 2009 and subsequent years. Approval of this waiver will balance LWD's desire to achieve our WIA strategic planning objectives with the need to demonstrate compliance with the statutory and regulatory requirements for each of the individual programs in our unified plan. This waiver request is consistent with our approved waiver request for Customized training.</p> <p>LWD is committed to ensuring all possible employment opportunities for the residents of New Jersey. OJT optimizes the resources available under workforce development initiatives to meet the needs of employers, as well as job seekers, while minimizing programmatic and bureaucratic barriers. However, the current 50 percent employer contribution requirement, particularly during the current recession, limits the ability to market OJT training programs to employers, especially those from small business. Employers too often conclude that the 50 percent contribution requirement creates costs that outweigh the benefits of participating in an OJT training program. The proposed sliding scale for the employer contribution will create the necessary flexibility for employers to provide the required contribution at a rate that more appropriately represents a particular business' or industry's cost benefit ratio of contributing to attain skilled employees.</p>	11/12/2009

WIA Waiver Requests NJ – PY 2009				
# of Requests	Waiver	Type of Request	Description	USDOL Approval Date
10	OJT Match (cont'd)	New	<p>By removing the requirement of a 50 percent employer contribution towards the cost of training to businesses with 100 or less employees, LWD and local WIBs will be able to more effectively market WIA-funded OJT training to the private sector in support of building relations with employers in high demand, high growth industries. Allowing businesses to apply the sliding scale to determine the contribution amount will increase participation in OJT programs at the local level. Employers will benefit by having a labor pool with the marketable skills they require. The specific goals to be achieved by the waiver are to: 1) Improve the ability of LWD to respond to changes in employer and industry needs; 2) Increase control for program delivery; 3) Increase employer/Board collaboration to address industry needs and worker training; 4) Increase accountability for service providers; and 5) Provide greater flexibility in designing and implementing WIA programs.</p> <p>Under the waiver the following reimbursement amounts will be permitted: 1) up to 90 percent for employers with 50 or fewer employees 2) up to 75 percent for employers with 51-250 employees. For employers with more than 250 employees, the current statutory requirements (50 percent reimbursement) will continue to apply. When determining the funding source for on-the-job training, the State must use the appropriate program funds for the appropriate WIA-eligible population. The State may provide on-the-job training to low-income adults with WIA Adult funds, and may provide on-the-job training to dislocated workers with WIA Dislocated Worker funds. On-the-job training provided with statewide funds must serve WIA eligible individuals.</p>	11/12/2009

WIA Waiver Requests NJ – PY 2009				
# of Requests	Waiver	Type of Request	Description	USDOL Approval Date
11	Common Measures	New	<p>New Jersey requested a waiver at WIA Section 136 (b) and 29 CFR 666.100 plus 667.300 that would allow the exclusive use of the Common Performance Measures for performance accountability and reporting for the WIA Adult, Dislocated Worker, Youth, Wagner-Peyser, Veterans, and Trade Act programs. The waiver would streamline the performance reporting system, encourage system integration, and enable local areas to better focus on delivery of customer services rather than costly administrative duties. The waiver would permit local workforce areas to focus additional resources on training opportunities and regional workforce service strategies.</p> <p>The Common Measures focus on attainment of employment, employment retention, earnings, and youth education and credentials, and efficiency. New Jersey’s intent mirrors that of the Workforce Investment Act and WIA Reauthorization – to simplify and streamline the performance accountability system that is an integral part of a reformed workforce development system. This request is consistent with New Jersey’s vision for a more knowledgeable, skilled, engaged, and flexible workforce. The Common Measures performance standards give program administrators and operators a set of more clear, understandable outcomes measures across all workforce programs. This will enhance oversight and assessment of program effectiveness. Training and Employment Guidance Letter (TEGL) 17-05 describes the Employment & Training Administration’s Common Measures Policy. TEGL 14-08 indicates “The common measures have become the basis of the workforce system’s performance accountability.” According to the DOLETA website, 31 states have already been granted a waiver for implementation of, and reporting only for, the common measures.</p>	11/12/2009

WIA Waiver Requests NJ – PY 2009				
# of Requests	Waiver	Type of Request	Description	USDOL Approval Date
12	Eligible Training Provider List (ETPL)	New	<p>New Jersey requested an extension of its current waiver of the Workforce Investment Act (WIA) and the accompanying regulations to extend the period of initial eligibility and subsequent eligibility for training providers (entities which are eligible to receive WIA Title I-B funds or Workforce Development Partnership Program funds) on the Eligible Training Provider List (ETPL) to June 30, 2010. The State of New Jersey, Department of Labor and Workforce Development (LWD) remains fully committed to the value of the ETPL and its implementation, maintenance and quality assurance as a means for ensuring customer choice and promoting appropriate, relevant and in-demand training. The additional time is needed to ensure that the information that the State will make available to the public is reliable, accurate, and equitable to clients and to training providers.</p> <p>This extension is necessary in order to promulgate and implement new rules governing the State's eligible training provider certification process, for placement on the Statewide ETPL, as required by 29 U.S.C. 2842 (Section 122 of WIA). These rules will provide the underpinning for: Initial ETPL certification process for exempt training providers; Initial ETPL certification process for non-exempt training providers; Application submission process; Initial ETPL certification determination; Exceptions to training provider ETPL certification requirements; Application for subsequent eligibility determination; Determination of subsequent eligibility; Standards of performance; Development and maintenance of ETPL; Dissemination of ETPL; Inspection and monitoring; Denial or termination of ETPL certification; Repayment; and Appeals.</p> <p>Implementation of these regulations will strengthen all aspects of the delivery system for the provision of quality training which the State makes available to eligible recipients in order to strengthen New Jersey's workforce system and to enhance the overall economic health in congruence with the Strategic Five-Year Unified State Plan for the New Jersey Workforce Investment System. It is expected that the ETPL will contain reliable and complete information with which to determine initial and subsequent eligibility for training providers after June 30, 2010. The ETPL is accessible by the training provider community through the Internet at www.njtopps.org. The list is maintained by the Center for Occupational Employment Information (COEI).</p>	11/12/2009

WIA Waiver Requests NJ – PY 2009				
# of Requests	Waiver	Type of Request	Description	USDOL Approval Date
12	Eligible Training Provider List (ETPL) (cont'd)	New	<p>The State Employment and Training Commission (SETC), in conjunction with the COEI, will promulgate rules that govern all aspects of implementation, maintenance and evaluation of the ETPL by ensuring that appropriate guidelines are implemented for initial and subsequent approval for placement on the ETPL to ensure that clients of these training programs participate in quality programming to fulfill their respective training needs and job placement needs.</p> <p>The focus will be on continuous improvement, monitoring and evaluation and the use of appropriate data for informed decision-making. The LWD is continuing to work with the John J. Heldrich Center for Workforce Development at Rutgers, The State University of New Jersey, to conduct ongoing evaluations of the available student record information to determine whether it is reliable and sufficient for program performance measurement. Work is continuing to resolve several issues including reporting into the New Jersey Consumer Report Card (CRC), quality of the data and decision-making protocols necessary for the removal of training providers who do not meet quality performance standards. A Memorandum of Understanding (MOU) has been signed with Rutgers, The State University of New Jersey, for the continuation of their technical support for the refinement and implementation of the CRC.</p> <p>When performance measurement information is prepared, it will be reviewed by staff at the SETC, LWD, all cognizant agencies as well as by individual training vendors. After this review, determinations about subsequent eligibility to remain on the ETPL will be made and the information will be available on the CRC Internet site for public viewing, use and decision-making.</p>	11/12/2009

WIA Waiver Requests NJ – PY 2009				
# of Requests	Waiver	Type of Request	Description	USDOL Approval Date
13	Class-size Training for Older Youth	New	<p>New Jersey requested a waiver of the statutory and regulatory requirements at WIA Regulations Section 123, IDENTIFICATION OF ELIGIBLE PROVIDERS OF YOUTH ACTIVITIES. The local boards, as per WIA requirements, have awarded grants or contracts on a competitive basis based upon the recommendations of the youth council and the criteria in the State plan, and conduct oversight with respect to the providers. These processes comply with OMB requirements codified in 29 CFR Parts 95.40-95.48 and 97.36.</p> <p>The goal of the waiver is to give the local workforce investment areas greater flexibility and access to the training providers when the competitive process has been exhausted.</p> <p>The waiver will positively impact WIA services available to eligible older youth. Local areas will be able to obtain quality services for these youth even when there is a lack of eligible providers for this population.</p> <p>New Jersey is requesting that a process be instituted in the event the competitive procurement process for identifying eligible providers has been exhausted. Such process would provide that local areas directly negotiate with public entities, such as community colleges, to design effective programs to meet the local needs for youth services in the event that procurement does not produce the services deemed essential for demand growth occupations. The ability for local boards to negotiate directly with public entities that provide the required training will promote increased flexibility at the local level and support the development of demand-driven programs for youth. The process to be adopted is to be consistent with New Jersey Local Public Contracts Law at N.J.S.A. 40A11-5 which states the process by which exceptions can be made to the requirement for competition.</p>	Currently under review by USDOL

WIA Waiver Requests NJ – PY 2009				
# of Requests	Waiver	Type of Request	Description	USDOL Approval Date
13	Class-size Training for Older Youth (cont'd)	New	<p>N.J.S.A. 40A 11-5 Section (3) reads as follows:</p> <p>"(3) Bids have been advertised pursuant to section 4 of P.L.1971, c.198 (C.40A:11-4) on two occasions and (a) no bids have been received on both occasions in response to the advertisement, or (b) the governing body has rejected such bids on two occasions because it has determined that they are not reasonable as to price, on the basis of cost estimates prepared for or by the contracting agent prior to the advertising therefor, or have not been independently arrived at in open competition, or (c) on one occasion no bids were received pursuant to (a) and on one occasion all bids were rejected pursuant to (b), in whatever sequence; any such contract may then be negotiated and may be awarded upon adoption of a resolution by a two-thirds affirmative vote of the authorized membership of the governing body authorizing such contract; provided, however, that:</p> <p>i) A reasonable effort is first made by the contracting agent to determine that the same or equivalent goods or services, at a cost which is lower than the negotiated price, are not available from an agency or authority of the United States, the State of New Jersey or of the county in which the contracting unit is located, or any municipality in close proximity to the contracting unit;</p> <p>(ii) The terms, conditions, restrictions and specifications set forth in the negotiated contract are not substantially different from those which were the subject of competitive bidding pursuant to section 4 of P.L.1971, c.198 (C.40A:11-4); and</p> <p>(iii) Any minor amendment or modification of any of the terms, conditions, restrictions and specifications, which were the subject of competitive bidding pursuant to section 4 of P.L.1971, c.198 (C.40A:11-4), shall be stated in the resolution awarding such contract; provided further, however, that if on the second occasion the bids received are rejected as unreasonable as to price, the contracting agent shall notify each responsible bidder submitting bids on the second occasion of its intention to negotiate, and afford each bidder a reasonable opportunity to negotiate, but the governing body shall not award such contract unless the negotiated price is lower than the lowest rejected bid price submitted on the second occasion by a responsible bidder, is the lowest negotiated price offered by any responsible vendor, and is a reasonable price for such goods or services."</p>	Currently under review by USDOL

WIA Waiver Requests NJ – PY 2009				
# of Requests	Waiver	Type of Request	Description	USDOL Approval Date
13	Class-size Training for Older Youth (cont'd)	New	<p>The State of New Jersey’s public procurement law allows for non-competitive selection under “sole-source” conditions as per the terms of N.J.S.A. 40A 11-5 Section (3). The State will review the process undertaken by each local WIB to determine that services cannot be procured competitively prior to final procurement. The documentation provided by the WIBs must adhere to the requirements as stated in 40A 11-5 Section (3) above.</p> <p>The following evidence will be required to establish failure of competitive procurement:</p> <ul style="list-style-type: none"> • A description of the local area’s procurement process must be in place. This process is part of the local area WIA State Plan as required by WIA Section 118 (9). • The local areas will forward copies of the Notice of Availability advertised in a newspaper [as required by N.J.S.A. 40A:11-4.5 (a) and 29 CFR 97.36 (d) (3) (i)] to the Department of Labor and Workforce Development and either a) copies of proposals determined to be insufficient with an explanation of why they are insufficient or b) a letter stating that no proposals were received. • The results of the local area procurement process will be reviewed annually in the Monitoring and Compliance Unit (MCU) Procurement and Contracting Review to determine if the process has been followed with any findings and/or recommendations issues in a final report forwarded to the local area. • A description of the local resolution of a related issue will be submitted to the State. This will also be reviewed annually in the MCU Procurement and Contracting Review. • Verification of receipt, review, and approval of the above items will be sent to local areas by the Department of Labor and Workforce Development’s Division of One-Stop Coordination and Support. • The local area will adhere to the terms and conditions as in N.J.S.A. 40A 11-5 Section (3). A formal communication will be developed to notify the local areas regarding the terms and conditions of the approved waiver. 	Currently under review by USDOL

WIA Waiver Requests NJ – PY 2009				
# of Requests	Waiver	Type of Request	Description	USDOL Approval Date
13	Class-size Training for Older Youth (cont'd)	New	<p>The following conditions would determine the need for classroom size training for older youth who could not receive proper training through the ITA system:</p> <ul style="list-style-type: none"> Based upon a cost-analysis, the cost-effectiveness has been determined as appropriate for the classroom training. In order to establish justification for the classroom training a cost analysis is required prior to release of a Request for Proposal. Specific social and/or developmental activities must be embedded in the classroom training in order to meet the goals of the individuals' education/training development plan. 	Currently under review by USDOL