

Guidelines for Implementing Workforce Investment Act Waivers

Texas Workforce Commission
WORKFORCE DEVELOPMENT DIVISION

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I.

Introduction

The Workforce Investment Act (WIA) waivers listed in this guide fall within one of the three following categories:

1. **Commission-Specific Waivers**—may directly or indirectly affect Local Workforce Development Boards (Boards); however, there is no action that Boards are required to take to implement them.
2. **Board-Specific Waivers**—apply to all local workforce development areas (workforce areas) and require action if a Board chooses to implement them.
3. **American Recovery and Reinvestment Act of 2009 Waivers**—apply to all workforce areas using American Recovery and Reinvestment Act (ARRA) of 2009 funds and require action if a Board chooses to implement them.

The U.S. Department of Labor (DOL) responded to the Texas Workforce Commission Waiver Plan on November 10, 2009. DOL approved the following waivers (with or without modifications) and extended the waivers until June 30, 2010:

Commission-Specific Waivers

- Common Measures and Integrated Performance
- Rapid Response/Incumbent Worker Training (with modifications)
- Contracting for Board Performance Measures
- Extension of Certification Period for Currently Certified Training Programs

Board-Specific Waivers

- Employer Contribution for Customized Training
- Transferring Funds between Adult and Dislocated Worker Programs (with modifications)
- Older and Out-of-School Youth Use of Eligible Training Provider List
- WIA Formula Funds Used as Local Activity Funds (with modifications)

American Recovery and Reinvestment Act of 2009 Waivers

- Performance Measures for Youth Who Participate Only in Work Experience Activities
- Program Design Flexibility for Youth in Work Experience

DOL disapproved the following waivers:

- Recapture of WIA Funds
- Redistribution of Funds
- Sliding Scale Employer Match for On-the-Job Training

The following hurricane-specific waivers have expired and have not been extended:

- Conversion of Up to 100 Percent Formula-Allocated Funds to Local Activity Funds
- Use of Funds for Capitalization of Businesses
- Youth Program Elements

- Twelve-Month Follow-up Services for Youth

This guide provides:

- general information on all approved waivers within each category; and
- detailed procedural guidance and requirements for implementing the waivers.

II.

Commission-Specific Waivers

Common Measures and Integrated Performance

This waiver, originally approved by DOL on July 1, 2006, permits the Commission to replace the original 17 WIA performance measures set forth in WIA §136(b) with the six Common Measures. On November 10, 2009, DOL extended this waiver until June 30, 2010.

The Commission no longer reports to DOL's Employment and Training Administration on the following WIA measures:

- Adult and dislocated worker credential rates
- Participant and employer customer satisfaction
- Older youth measures
- Younger youth measures

The Commission continues to report on the three adult Common Measures and the three youth Common Measures.

The waiver approval letter can be accessed at http://www.twc.state.tx.us/boards/wia/twc_waiver_approval.pdf.

Rapid Response/Incumbent Worker Training

The original waiver, approved by DOL on July 20, 2005, permitted the Commission to use up to 25 percent of the funds reserved for rapid response activities to provide allowable statewide employment and training activities to better meet the demand for incumbent worker training. On November 10, 2009, DOL extended this waiver until June 30, 2010, with modifications.

The modified waiver permits the Commission to use up to 20 percent of rapid response funds for incumbent worker training only as part of a layoff aversion strategy. All training delivered under this waiver is restricted to skill attainment activities.

This waiver does not apply to ARRA funds.

The waiver approval letter can be accessed at http://www.twc.state.tx.us/boards/wia/twc_waiver_approval.pdf.

Contracting for Board Performance Measures

This waiver, originally approved by DOL on July 1, 2005, permits the Commission to develop methodologies that allow greater flexibility in contracting Board performance measures. On November 10, 2009, DOL extended this waiver until June 30, 2010.

The waiver provides the Commission with flexibility to modify Board performance measures. The Commission will continue to track and report the six Common Measures at the state and Board levels. However, the Commission may choose not to use all six measures in its Board contracts. The Commission has developed integrated Board-contracted measures.

The waiver approval letter can be accessed at
http://www.twc.state.tx.us/boards/wia/twc_waiver_approval.pdf.

Extension of Certification Period for Currently Certified Training Providers

This waiver, originally approved by DOL on January 3, 2003, permits the Commission to extend the period of eligibility for training providers currently certified under the WIA Eligible Training Provider System (ETPS). On November 10, 2009, DOL extended this waiver until June 30, 2010.

WIA sets forth the subsequent eligibility performance reporting requirements for all training providers. The subsequent eligibility requirements are burdensome and resulted in a decline in the number of Eligible Training Providers. DOL provided the Commission with a waiver that extends the period of initial eligibility for training providers.

The waiver approval letter can be accessed at
http://www.twc.state.tx.us/boards/wia/twc_waiver_approval.pdf.

III.

Board-Specific Waivers

Employer Contribution for Customized Training

This waiver (previously called Sliding Scale Employer Match for Customized Training) was originally approved by DOL on January 3, 2003, and permitted the Commission to replace the WIA-required 50 percent employer match for customized training with an employer contribution based on a 10 to 50 percent sliding scale. On November 10, 2009, DOL extended this waiver until June 30, 2010, with modifications.

The modified waiver permits the Commission to replace the WIA-required 50 percent employer match for customized training with a 10 to 50 percent sliding scale contribution based on the size of the business. Boards choosing to implement this waiver must adhere to the following sliding scale:

- No less than 10 percent contribution for employers with 50 or fewer employees
- No less than 25 percent contribution for employers with 51–250 employees
- No less than 50 percent contribution for employers with more than 250 employees

When determining the funding source for customized training, Boards must use the appropriate program funds for the appropriate WIA eligible population. For example, Boards must:

- use WIA adult funds when providing customized training to low-income adults;
- use WIA dislocated worker funds when providing customized training to dislocated workers; and
- ensure that customized training provided with WIA statewide and local activity funds serves WIA-eligible individuals.

This waiver applies to WIA formula funds and ARRA funds.

The waiver approval letter can be accessed at http://www.twc.state.tx.us/boards/wia/twc_waiver_approval.pdf.

Transferring Funds between Adult and Dislocated Worker Programs

This waiver, originally approved by DOL on January 3, 2003, eliminated the 30 percent limitation on transferring funds between the WIA adult and dislocated worker funding streams, and permitted the Commission to approve transfer amounts of up to 100 percent. On November 10, 2009, DOL extended this waiver until June 30, 2010, with modifications.

The modified waiver permits the Commission to approve transfer amounts of up to 50 percent of workforce area allocations between the WIA adult and dislocated worker funding streams, as requested by Boards. This waiver does not apply to funds made available through ARRA; therefore, Boards can transfer only up to 30 percent of ARRA funds between the WIA adult and dislocated worker programs.

This waiver must be governed by a locally developed policy. As required by Commission rule §801.51(f) and as detailed in WD Letter 10-07, Board members must take such actions in an open meeting.

The policy development process must include:

- a public review and comment period, published throughout the workforce area; and
- dialogue concerning the benefits and consequences of transferring the funds.

Note: Although the Commission understands that all workforce areas are subject to unforeseen events that can affect service delivery, requests for additional assistance funds necessitated by prior funds transfers will be denied.

Boards choosing to implement this waiver must submit a Contract Action Request (CAR) form to the Commission. An updated CAR form will be provided with WD Letter 04-10, to be issued in January 2010.

The waiver approval letter can be accessed at
http://www.twc.state.tx.us/boards/wia/twc_waiver_approval.pdf.

Older and Out-of-School Youth Use of Eligible Training Provider List

This waiver, originally approved by DOL on January 3, 2003, permits the Commission to allow Boards the option of using ETPS to secure training providers for older and out-of-school youth through the use of Individual Training Accounts (ITAs). On November 10, 2009, DOL extended this waiver until June 30, 2010.

Older (ages 19–21) and out-of-school youth use of ETPS and ITAs must be governed by locally developed policy. Local policies must be developed with input from the community, including an opportunity for a public review and comment period published widely throughout the workforce area. As required by Commission rule §801.51(f) and as detailed in WD Letter 10-07, Board members must take such actions in an open meeting.

This waiver applies to WIA formula funds and ARRA funds.

The waiver approval letter can be accessed at
http://www.twc.state.tx.us/boards/wia/twc_waiver_approval.pdf.

WIA Formula Funds Used as Local Activity Funds

This waiver, originally approved by DOL on August 19, 2003, allowed Boards to designate up to 10 percent of WIA formula funds as local activity funds to conduct approved statewide activities. The Commission subsequently submitted a request to increase this 10 percent cap, and DOL approved a new cap of 25 percent on July 26, 2005. On November 10, 2009, DOL extended this waiver until June 30, 2010, with modifications.

Under the modified waiver, Boards are permitted to designate up to 10 percent of WIA dislocated worker funds and up to 10 percent of WIA adult funds as local activity funds to use for incumbent worker training only as part of a layoff aversion strategy. Use of WIA adult funds must be restricted to serving low-income adults under this waiver. All training delivered under this waiver is restricted to skill attainment activities.

This waiver applies to WIA formula funds and ARRA funds.

To identify a need for additional flexibility, Boards choosing to designate WIA dislocated worker and adult funds as local activity funds must determine if a layoff aversion strategy is feasible.

Boards may consider the following criteria when identifying appropriate uses of local activity funds:

- How employers are selected (i.e., announced layoffs through a Worker Adjustment and Retraining Notification, other public notice, or other means; reduced employee hours; or another indicator of economic difficulty that could be addressed through layoff aversion strategies);
- Whether layoff aversion strategies are the appropriate solution for an individual employer, and whether training will provide the employer with the tools it needs to maintain operations and avoid closure or layoffs; and
- The resulting employer commitment, either to retain the employee, to pay the employee a higher wage, or to otherwise benefit the employee.

Implementation Requirements

Once a need for layoff aversion is determined, Boards choosing to use WIA dislocated worker and adult funds as local activity funds must:

- submit a CAR form to the Commission;
- submit a Local Activity Funds Designation Request form to the Commission;
- continue to operate under the current 10 percent limit on local administrative costs, with no separate amount set aside for administration of such activities;
- designate up to 10 percent of the workforce area's original WIA dislocated worker allocations and/or up to 10 percent of the workforce area's original WIA adult allocations as local activity funds; and
- continue to meet performance goals for WIA adult and dislocated worker formula allocations, and commit to specific performance outcomes for any services and activities provided using local activity funds.

WD Letter 04-10, to be issued January 2010, will provide Boards with:

- an updated CAR form;
- an updated Local Activity Funds Designation Request form; and
- instructions for using the forms.

The designation in the contract amendment will be written for an amount not to exceed the requested amount. If a Board’s planned activities are completed for an amount less than the designation request, the Board may use the remaining dollars in the fund stream of origin.

Boards may redesignate local activity funds as WIA formula allocations at any time prior to the contract end date. The funds will retain their original WIA adult or dislocated worker classification.

Financial Reporting Requirements

Boards must track and report local activity funds through the online expenditure reporting system in accordance with WD Letter 50-09 and any subsequent guidance.

Expenditure Requirements

Boards must be aware that Commission rule §800.63(k) requires Boards to meet an 80 percent expenditure benchmark to be eligible to receive statewide activity funds. The 80 percent applies to the total amount of a Board’s formula allocations, including any local activity funds.

Performance Reporting—TWIST Funding Sources

Boards must use the following The Workforce Information System of Texas (TWIST) fund codes to report activities and services provided with local activity funds. (*Note:* Individuals served with these funds are included in Common Measures.)

TWIST Fund Code	Fund Name	Eligibility	Services
158	WIA Adult Local Activity	Only basic WIA eligibility applies, i.e., citizenship/alien status (authorization to work), Selective Service registration, and age requirements.	Layoff aversion only
159	WIA Dislocated Worker Local Activity	Only basic WIA eligibility applies, i.e., citizenship/alien status (authorization to work), Selective Service registration, and age requirements.	Layoff aversion only

The waiver approval letter can be accessed at http://www.twc.state.tx.us/boards/wia/twc_waiver_approval.pdf.

IV.

American Recovery and Reinvestment Act of 2009 Waivers

Performance Measures for Youth Who Participate Only in Work Experience Activities

This waiver was approved by DOL on May 14, 2009, and expires on June 30, 2010. The waiver permits the Commission to use only the work readiness indicator and Summer Employment Completion Rate—not Common Measures—for reporting on services for out-of-school youth ages 18–24 who:

- participate only in work experience that occurs between May 1, 2009, and March 31, 2010; and
- are served only with ARRA funds.

The Summer Employment Completion Rate performance measure consists of the number of youth who complete their summer employment activity (numerator) divided by the number of youth who participate in summer employment (denominator).

Out-of-school youth ages 18–24 who receive support services in addition to participating in work experience will be included only in the work readiness indicator and Summer Employment Completion Rate.

Note: Youth receiving services paid for out of non-ARRA funds will be included in regular Common Measures reporting. This includes youth receiving support services paid for out of WIA youth formula funding. To maintain the exclusion from Common Measures, Boards must ensure that youth receive only ARRA-funded services.

The waiver approval letter can be accessed at
http://www.twc.state.tx.us/boards/wia/arra_waiver_approval.pdf.

Program Design Flexibility for Youth in Work Experience

This waiver was approved by DOL on May 14, 2009, and expires on June 30, 2010. The waiver permits the Commission to provide program design flexibility in serving out-of-school youth ages 18–24 who:

- only participate in work experience that occurs between May 1, 2009, and March 31, 2010; and
- are served with ARRA funds.

The waiver also can be applied to out-of-school youth ages 18–24 who receive support services in addition to participating in work experience.

This waiver waives the WIA requirements for:

- providing a minimum of 12 months of follow-up services;
- providing an objective assessment; and
- developing an Individual Service Strategy.

Boards may provide these services as deemed appropriate for such youth participants.

The waiver approval letter can be accessed at

http://www.twc.state.tx.us/boards/wia/arra_waiver_approval.pdf.