

DIRECTIVE

WORKFORCE SERVICES

Number: WSD12-20

Date: June 26, 2013

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TO: WORKFORCE DEVELOPMENT COMMUNITY

SUBJECT: CONTRACTS WITH HIGHER EDUCATION OR ELIGIBLE TRAINING PROVIDERS

EXECUTIVE SUMMARY:

Purpose:

This directive provides guidance regarding Local Workforce Investment Boards (local board) contracting directly with institutions of higher education or eligible training providers, and extends this flexibility through Program Year (PY) 2013-14.

Scope:

This directive applies to all local boards.

Effective Date:

This directive is effective on the date of issuance.

REFERENCES:

- Workforce Investment Act (WIA) Sections 122, 123, 129(c), and 134(d)(4)(D)
- Continuing Appropriations Act, 2013 (Public Law 112-175)
- Consolidated Appropriations Act, 2012, Division F (Public Law 112-74)
- Full-Year Continuing Appropriations Act, 2011, Division B (Public Law 112-10)
- Consolidated Appropriations Act, 2010, Division D (Public Law 111-117)
- Title 20 United States Code (USC) Sections 1001-1002
- One-Stop Comprehensive Financial Management Technical Assistance Guide
- Department of Labor (DOL) Training and Employment Guidance Letter (TEGL) 25-12, WIA Adult, Dislocated Worker and Youth Activities Program Allotments for PY 2013; Final PY 2013 Allotments for the Wagner-Peyser Act Employment Service Program Allotments; and Workforce Information Grants to States Allotments for PY 2013 (May 1, 2013)

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- DOL TEGL 26-10, WIA Adult, Dislocated Worker and Youth Activities Program Allotments for PY 2011; Final PY 2011 Allotments for Wagner-Peyser Act Employment Service Program Allotments; and Workforce Information Grants to States Allotments for PY 2011 (May 10, 2011)
- DOL TEGL 12-09, Joint Guidance for States Seeking to Implement Subsidized Work-Based Training Programs for Unemployed Workers (January 29, 2010)
- Workforce Services Directive [WSD09-8](#), WIA Job Training Automation (JTA) System Client Forms Handbook (February 11, 2010)
- WIA Directive [WIAD06-15](#), Subject: Eligible Training Provider List (ETPL) (February 7, 2007)
- WIA Directive [WIAD04-4](#), Subject: Recovery of WIA Tuition and Training Refunds (August 18, 2004)
- WIA Directive [WSD12-10](#), Subject: Procurement (November 30, 2012)

STATE-IMPOSED REQUIREMENTS:

This directive contains no State-imposed requirements.

FILING INSTRUCTIONS:

This directive supersedes Workforce Services Directive WSD11-11, dated June 8, 2012, and finalizes Workforce Services Draft Directive WSDD-86, issued for comment on May 28, 2013. The Workforce Services Division received one comment during the draft comment period. The comment received resulted in one substantive change to the directive which is viewed as highlighted text. The highlighted text will remain on the Internet for 30 days from the issuance date. A summary of comments is provided as Attachment 1. Retain this directive until further notice.

BACKGROUND:

In order to increase the availability of training to workforce investment system customers, the Consolidated Appropriations Act, 2010 provides local boards the flexibility to contract directly with institutions of higher education or eligible training providers under certain conditions. Specifically, the Consolidated Appropriations Act, 2010 states, “a local board may award a contract to an institution of higher education or other eligible training provider if the local board determines that it would facilitate the training of multiple individuals in high-demand occupations, if such contract does not limit customer choice.” Section 1104 of the Full-Year Continuing Appropriations Act, 2011 states that unless otherwise specified, the requirements, conditions, limitations and authorities in the Consolidated Appropriations Act, 2010, continue to be in effect for PY 2011. The Consolidated Appropriations Act, 2012 and the Continuing Appropriations Act, 2013 provide the same flexibility and are intended to increase education, training enrollments, and training capacity at a time when many states and educational institutions are experiencing budget shortfalls. Direct contracts with institutions of higher learning or eligible training providers allow local boards to quickly design training to fit the needs of both job seekers and employers.

POLICY AND PROCEDURES:

Definitions

For purposes of this directive, the term "institution of higher education" means an educational institution that:

- admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;
- is legally authorized within such State to provide a program of education beyond secondary education;
- provides an educational program for which the institution awards a bachelor's degree or provides not less than a two-year program that is acceptable for full credit toward such a degree;
- is a public or other nonprofit institution (including private nonprofit institutions); and
- is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted pre-accreditation status by such an agency or association that has been recognized by the Secretary for the granting of pre-accreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time [20 USC 1001 subsection (a)].

The institution of higher education term also includes:

- additional institutions [20 USC 1001 subsection (b)].
- a proprietary institution of higher education [20 USC 1002 subsection (b)].
- a postsecondary vocational institution [20 USC 1002 subsection (c)].

The term "eligible training providers" refers to training providers listed on the State's ETPL (See WIA Directive WIAD06-15, Eligible Training Provider List).

Contract Provisions

Local boards may use adult, dislocated worker, and youth formula funds to award contracts to institutions of higher education or eligible training providers, under the following conditions:

- the local board determines it would facilitate the training of multiple individuals in high-demand occupations, and
- the contracts do not limit customer choice

This flexibility applies to PY 2011-12, PY 2012-13 and PY 2013-14 funds, and is applicable throughout the life of the funds (e.g., July 1, 2011 through June 30, 2013 for PY 2011-12 funds).

Local boards must comply with applicable federal and State procurement regulations and policies prior to awarding contracts to institutions of higher education or eligible training providers (See WIA Directive WSD12-10, Procurement). Therefore, local boards must conduct procurements in a manner designed to provide full and open competition. Thus, if a local board determines a sole source procurement to be appropriate, they must meet the requirements of noncompetitive proposals as stated in the [One-Stop Comprehensive Financial Management Technical Assistance Guide](#), Chapter II-10, Procurement. Additionally, local boards must ensure contracts identify training providers as either vendors or subrecipients consistent with the guidance provided in the One-Stop Comprehensive Financial Management Technical Assistance Guide, Appendix E.

Local boards may pay for the full cost of training at the beginning of the course. However, local boards must ensure they have policies and procedures in place to recover unused WIA training monies and/or tuition refunds as required in WIA Directive WIAD04-4, Recovery of WIA Tuition and Training Refunds. Additionally, any classroom training purchased with youth formula funds must meet the youth program design parameters established in WIA Section 129(c).

Institutions of higher education, such as community colleges, do not need to be on the State's ETPL in order to be awarded a contract. Other providers of training that are not institutions of higher education must be on the ETPL in order to be awarded a contract.

Training services include the full range of occupational skills training, adult education and literacy services, and customized training as described in WIA Section 134(d)(4)(D). Before entering into such contracts, local boards should assess current training offerings to ensure that the contracts are not duplicating existing training courses and curricula. These training contracts can be performance-based to ensure that they result in real outcomes for the students.

As part of the contract, the institution of higher education or eligible training provider could develop curriculum for emerging sectors and enhance the capacity of the institutions to ensure quality training within limited timeframes. As such, the development of curriculum by institutions of higher education can be considered a training activity under WIA, if it is developed in the context of providing training to WIA participants. Curriculum activities should focus on adapting existing or creating new curriculum that will result in a short-term increase in training capacity, rather than long-term curriculum development activities.

Recording Training Activities in JTA for Institutions of Higher Education not on the ETPL

When institutions of higher education, such as community colleges, are placed on the ETPL, they are assigned a State Provider ID and each program offered by the institution is assigned a State Program ID. Institutions of higher education contracting directly with local boards are not required to be on the ETPL and therefore will not have State Provider/Program IDs. To accommodate these training providers, an enrollment activity code has been created in the JTA system. Activity code #66 has been established to enroll participants in occupational skills training programs, Adult Education and literacy services, and customized training at institutions of higher

education that have contracted directly with a local board. This activity code should only be used for participants enrolled at institutions of higher education in training programs that are not on the ETPL and would otherwise be required to receive training from an ETPL provider. If an ETPL provider is not required based on the funding stream then the appropriate JTA code should be used.

ACTION:

Please bring this directive to the attention of the local board and other relevant parties.

INQUIRIES:

If you have any questions, please contact your [Regional Advisor](#) at (916) 654-7799.

/S/ JOSÉ LUIS MÁRQUEZ, Chief
Workforce Services Division

Attachment

Summary of Comments
Draft Directive “Contracts with higher education or eligible training providers”

There was one comment to the draft version of this directive:

Comment #1: Does the definition of institutions of higher education provided in this directive apply only to this directive or does it also apply to other Workforce Services directives and U.S. Department of Labor guidance?

Resolution: The definition of institutions of higher education provided in this directive applies only to this directive. This information was clarified by adding “for purposes of this directive” before the definition of institutions of higher education on page three of the directive.