

Oklahoma Employment Security Commission



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OKLAHOMA EMPLOYMENT AND TRAINING ISSUANCE # 17-2005

Date: October 13, 2005

To: WIA Board Staff
WIA Grant Recipients

From: Richard Gilbertson, Director,
Workforce Integrated Programs Division

Subject: WIA Work-Flex Waiver Procedures

Purpose: The purpose of this policy is to outline procedures for local workforce investment areas to apply to the Governor for waiver of Workforce Investment Act statutory provisions. Also, to provide a list of provisions of the Workforce Investment Act (WIA) that have previously been waived by the Department of Labor or new provisions that have not been waived but are within the statutory waiver authority under the WIA regulations at 20 CFR 661.400.

Background: The Workforce Investment Act (WIA) section 189(i) allows states to apply to the Department of Labor for waiver of certain statutory requirements within the Act. The application must list specific provisions for waiver by the Secretary and must be accompanied by a waiver plan. Once a state is identified as a work-flex state, it has the authority to identify additional local level provisions to waive without further approval from the Secretary of Labor. Oklahoma is designated a work-flex state for the two-year period, July 1, 2005, through June 30, 2007, pursuant to a work-flex plan submitted as part of the Strategic Two-Year State of the Workforce Investment Plan. This work-flex waiver authority is applicable to certain portions of WIA Title I, subtitles B and E and Sections 8-10 of the Wagner Peyser Act.

Message: The Oklahoma Strategic Two-Year State of the Workforce Investment Plan, as approved by the U.S. Department of Labor, outlines how local areas may apply for waivers to the State under Work-flex.

“Local areas will submit requests for waivers to OESC. OESC will make its recommendation to the Office of Workforce Solutions in the Oklahoma Department of Commerce. The Office will begin consultations with officials from the Employment & Training Division of the Oklahoma Employment Security Commission once the waiver is received. The local area

submitting the request for waiver must also publish the request on its website and/or in the legal notices of one local newspaper with a primary circulation in the local workforce area. If the request is posted to the local area's website, it must remain on the website for at least two weeks and interested parties must be informed on how to comment on the proposed waiver, either by e-mail or regular mail. If the waiver is published in a local newspaper, it must run in two consecutive editions. Expense to publish the waiver request will be borne by the requesting local area.

The waiver request will be posted on the OESC website within one week of receipt. Once the waiver request is posted, a two-week period will be allowed for public comment. Interested parties will be able to comment on the waiver request by direct link on the website, e-mail, or regular mail. A deadline will be posted for public comment. At the conclusion of the two-week comment period, all comments from the local area will be forwarded to the Office of Workforce Solutions and reviewed by Office of Workforce Solutions and OESC staff. A recommendation for approval or denial will be forwarded to the Governor. Once the Governor has made a decision on the waiver, a letter will be forwarded to WIB staff and the WIB chairperson regarding that decision and next steps.

It is the goal of OESC to have waiver requests granted or denied within 45 days of receipt.”

Work-Flex waivers may not be granted unless requested by and granted to local Workforce Investment Areas, as defined in WIA §116, and in accordance with procedures described in the State Work-Flex Plan. The following statutory and regulatory requirements are excluded from the Work-Flex authority and may not be waived:

1. Wage and labor standards;
2. Grievance procedures and judicial review;
3. Nondiscrimination;
4. Eligibility of participants;
5. Allocation of funds to local areas;
6. Establishment and functions of local areas and local boards;
7. Review and approval of local plans;
8. Worker rights, participation, and protection;
9. Statutory or regulatory provisions applicable at the State level may not be waived by a State under the Work-Flex authority granted to a State, but may be waived by the Secretary in accordance with the requirements of 20 CFR 661.410 and 420 (general statutory and regulatory waivers); and
10. Requirements relating to the basic purposes of WIA Title I, including any of the statutory or regulatory provisions essential to the key reform principles embodied in WIA, as described in 20 CFR 661.400, except in extremely unusual circumstances.

The following procedure must be followed to process requests for waivers under WIA:

1. The waiver request should be submitted to the Director of Workforce Integrated Programs in OESC.

2. The local area submitting the waiver request must publish the request on its website and/or in the legal notices of at least one newspaper with a primary circulation in the local workforce area. The waiver request must remain on the local website for at least two weeks and/or be published in two consecutive editions of the newspaper. Interested parties should be instructed on how to comment on the waiver request by regular mail or email.
3. OESC will post the waiver request on its website within one week after receipt. Two weeks will be allowed for public comment on the waiver request.
4. At the end of the respective comment periods, all public comments received by the local area and a recommendation by OESC will be immediately forwarded to the Deputy Secretary of Commerce for Workforce for Governor's office approval. After final review, a determination will be made and local WIB staff and the local WIB Chairpersons will be notified of the decision by OESC.

Waiver requests from local areas should contain the following information:

1. The relevant Section(s) and Subsections(s) of WIA to be waived.
2. The time period projected for the waiver.
3. Why the waiver is needed
4. Where the waiver request will be posted/published (e.g., website address, local newspaper)
5. How WIA programmatic outcomes will be affected by the waiver
6. Individuals impacted by the waiver
7. The process to monitor progress in implementing the waiver
8. How the granting of a waiver will assist the local area in carrying out its vision, mission, and goals as outlined in the strategic and local plans.

Action Required: This is official State policy that must be maintained in your permanent policy files.

Contact Information: Refer inquiries to Tony Russo at tony.russo@oesc.state.ok.us or (405) 962-7594.