



JUL 18 2002

The Honorable George Ryan
Governor of Illinois
Springfield, Illinois 62706

Dear Governor Ryan:

This is in response to your Workforce Investment Act (WIA) waiver requests related to providing WIA funded services to long-term incarcerated individuals. This request was submitted for consideration under the Secretary's general statutory and regulatory waiver authority at WIA section 189(i)(4). This authority permits the Secretary to waive certain WIA and Wagner-Peyser statutory and regulatory provisions that impede the implementation of a state's five-year strategic plan. The following is a discussion of the issues raised by the state's requests, and the disposition of the state's waiver submission.

WIA section 134(a)(3)(A)(vii) provides that, among other allowable WIA activities, a state may use 15 % reserve funds for "carrying out other activities authorized in this section that the State determines to be necessary to assist local areas in carrying out activities described in subsection (d) or (e) through the statewide workforce system." In this case you have determined that, under this provision, a portion of the 15% funds (4 million annually in the current and succeeding program years) would be used by the state to serve long-term incarcerated individuals. In support of the designated project, the state is requesting a waiver of 1) the customer choice and individual training account (ITA) requirements at WIA sections 122 and 134(d)(4)(F) and (G), and 2) the performance measures under WIA section 136 (copy enclosed).

Allowable use of state-level 15% reserve funds (WIA section 134(a)(3)(A))

The state has authority to spend statewide reserve funds on the project proposed in the waiver request. Under 20 CFR 665.210(g), the state may spend statewide reserve funds to carry out such adult and dislocated worker employment and training activities "as the State determines are necessary to assist local areas in carrying out local employment and training activities." The use of 15% reserve funds to serve long-term incarcerated individuals is not specifically precluded by the statute or regulations, but it does raise issues on the appropriateness of using WIA funds in this manner, given the purposes of the Act. The state acknowledges that the program is targeted to inmates who are within five years of release from prison and that this project was state funded until state budget problems developed. Since the traditional purpose of WIA title I adult services is to provide the skills necessary to place individuals into unsubsidized employment, there is an issue of a nexus between the training received and the ability to be placed into the civilian labor force. We suggest that a more appropriate use of the WIA funds used in this project is to focus on training those individuals who are closer to their release date, for example, within one year of the expected release date.



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Waiver Request No. 1 -- Eligible Training Provider (ETP) and ITA Requirements (WIA sections 122 and 134)

A waiver is not needed to operate a project funded with statewide 15% reserved funds outside the Eligible Training Provider (ETP) and ITA system, which specifically apply to the formula allocated funds to the local areas. WIA and the regulations do not specifically require that the Governor's 15% reserve funds must comply with those formula fund requirements, and, accordingly, we have determined that a waiver is not necessary.

Waiver Request No. 2 -- Performance accountability system requirements (WIA section 136)

Illinois has requested a waiver to exclude the proposed project from the state's performance measurement system established in accordance with the provisions of WIA section 136. The use of 15% reserve funds to provide direct WIA services to participants has been incorporated into the performance accountability system under the WIA reporting requirements pursuant to the implementing regulations, and set forth in Training and Employment Guidance Letter (TEGL) No. 14-00, Change 1, Attachment F.

The statute provides that performance accountability is one of the WIA key principles, which form the foundation for the WIA program. The regulations at 20 CFR 661.410(c) clearly indicate that the Department does not intend to waive "any of the statutory or regulatory provisions essential to the key reform principles except in extremely unusual circumstances where the provision can be demonstrated as impeding reform."

Viewing the state's request under these standards, the state has not met the standard at 20 CFR 661.410(c) for granting a waiver of a key reform principle for the following reasons:

- 1) The state's description of services being provided to incarcerated individuals does not single this activity out as being different from standard WIA services, consisting of educational and occupational training intended to lead to employment. Therefore, the performance measures used for other WIA activities should apply here as well.
- 2) The basis for the waiver provided by the state is essentially that this population has severe and multiple barriers to employment; however, there are mechanisms in place to address the effect of such barriers on performance measures without the need for a waiver.
- 3) The WIA waiver provisions require that the state, as part of its request, describe the goals and expected programmatic outcomes of the waiver, if granted. Illinois' request has not proposed any such outcomes or any way in which to measure the success of the project. In effect there would be no performance accountability for the 15% funds earmarked for this project under the state's request, as submitted.

Accordingly, we are not prepared to approve a waiver under the scenario presented by the state in its request, as outlined above. Furthermore, we are not convinced that this is a matter best handled under the waiver process. We believe that the existing mechanisms in place for performance measures are adequate to address the state's concerns, without the need for a waiver.

In addressing state measures of performance, 20 CFR 666.120(h) provides that state negotiated levels of performance may be revised in accordance with 20 CFR 666.130. That section indicates the circumstances under which a Governor may request revision of negotiated levels. These circumstances include significant changes in economic conditions, *in the characteristics of participants entering the program*, or in the services to be provided from when the initial plan was submitted and approved, in accordance with WIA section 136(b)(3)(A)(vi). (Emphasis added.) The process made available by ETA to states, to take exceptional barriers into account in evaluating their impact on performance, is contained in TEGL No. 14-00 on renegotiating performance levels. Therefore, if the state believes that serving this target group will adversely impact its performance, then the appropriate venue for addressing the issue is in renegotiating performance levels. We are ready to address the state's concerns by re-negotiating the state's performance levels to reflect any impact of serving this particular population, which has severe and multiple barriers to employment.

Accordingly, the state's request to waive the performance measures at WIA section 136 is not approved (as indicated above, a waiver is not needed for the request to waive the ETP and ITA provisions at WIA sections 122 and 134, respectively). We are amenable to renegotiation of the state's performance measures to address issues raised as a result of serving incarcerated individuals. The Chicago Regional Office will be available to work with the state, when the state is ready to initiate the renegotiation process.

We are prepared to entertain other state and local-level waiver requests that the state may wish to submit, consistent with the provisions of the Act and regulations.

Sincerely,



Emily Stover DeRocco

Enclosure

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OFFICE OF THE GOVERNOR
207 STATE CAPITOL, SPRINGFIELD, ILLINOIS 62706

GEORGE H. RYAN
GOVERNOR

February 27, 2002

EXECUTIVE SECRETARIAT
OFFICE OF THE GOVERNOR
DEPARTMENT OF LABOR
WASHINGTON, D.C. 20220
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RECEIVED

Ms. Elaine L. Chao
Secretary of Labor
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C.

Dear Secretary Chao:

On behalf of the people of Illinois, I want to extend our sincerest gratitude to you and the Department for your rapid response to airline workers who found themselves suddenly displaced following the attacks of September 11, 2001. Your leadership in delivering relief funds to thousands of Illinois workers made an important difference in our ability to meet the challenges created by those horrible events. Many states, including Illinois, are learning that we need additional help and we again turn to you for assistance.

Due to September 11, 2001, Illinois has seen a significant reduction in revenue. This has resulted in budget cuts, some of which we believe could be made up by federal funds. One of the cuts we have been forced to make was to vocational training programs in our Corrections Department.

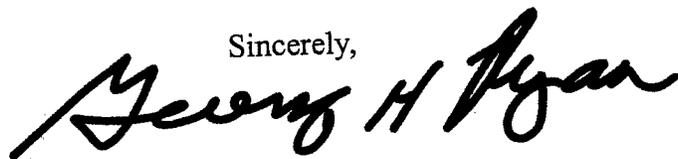
These programs are critical for two reasons. Most inmates sentenced to a term of incarceration arrive with little or no marketable skills, and it falls to the state to offer vocational training opportunities. It is also important to note, these men and women will be returning to our communities following their imprisonment. As they return without marketable skills, their chances for recidivism greatly increases.

Providing vocational training in correctional institutions, we feel, is worthwhile and in need of adequate financial support. However, due to the decline in state revenues, Illinois plans to fund these programs for the remainder of the state fiscal year that ends on June 30, 2002 and in the fiscal year that begins on July 1, 2002, using \$4 million of WIA Title 1 funds in each year. In connection with these plans, I am asking for your favorable consideration of our request for two waivers of certain provisions of the Title 1 program.

Additionally, I am asking for an expedited review of our request given the short time frame facing us, and the need to continue these programs uninterrupted.

Please let us know if we can provide additional information. Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink that reads "George H. Ryan". The signature is written in a cursive, flowing style.

GEORGE H. RYAN
Governor

cc: Byron Zuidema

Enclosure: Waiver Request for Certain Provisions of the Workforce Investment Act for the Operation of a Correctional Post-Secondary Vocational Training Program

**Waiver Request for Certain Provisions of the
Workforce Investment Act for the Operation of a Correctional
Post-Secondary Vocational Training Program**

State of Illinois

February 27, 2002

Background

The Illinois Department of Corrections (IDOC) enters into contracts with post-secondary schools (mostly community colleges) to provide training classes at the correctional facilities. There are currently eleven such contracts, serving approximately 6,000 inmates each year, all but a few of whom are adults. The program is targeted to inmates who are within five years of release from prison. Inmates in this program must have a high school diploma or GED, and must meet other requirements for entry into the specific training programs. Approximately two thousand inmates complete their programs and receive a credential each year. Although many of these will eventually enter employment upon release, many complete their training well prior to release and go on to other work assignments while they remain incarcerated.

The State is assuming that the expenditure of WIA Title I funds as described above is authorized under Section 134(a)(3)(A)(vii) of WIA, in that this is an activity deemed necessary to assist Local Workforce Investment Areas in carrying out activities under Sections 134(d) and (e) of WIA. The State is seeking a waiver of WIA requirements in two areas: 1) the application of performance standards under Section 136, and 2) the application of eligible training provider, Individual Training Account, and customer choice requirements under Sections 122 and 134. The rationale for each of these requests is provided below. The State is only seeking these waivers for the customers to be served under this IDOC program.

Performance Management Requirements

The WIA Title I performance measures instructions indicate that a person who is incarcerated at program exit does not count in the calculation of the performance outcomes. We recognize that the intent of this provision was to exclude customers who become incarcerated during the course of their participation in WIA, not necessarily those who were incarcerated at registration. Inasmuch as the instructions are silent in this regard, and given the magnitude of this program in terms of numbers of registrants, the prudent course of action is for us to request that the application of the WIA Title I performance measures be waived.

While we are continuing to assess the potential affect of including these customers on the States outcomes, it is clear that including them would cause the State to fail one or more of its adult measures. This is due to two reasons:

1. The population as a whole has substantial barriers to employment. Even in the best of circumstances, the outcomes for this population would be expected to be much lower than those for other adults. This, coupled with the size of the program, by itself would probably cause the State to fail one or more measures.
2. In addition, most of the inmates will not be available to enter the labor market at the time they complete their training. Therefore, the post-exit quarters for these customers would come and go while they were still incarcerated, essentially guaranteeing that they would never appear in the numerator of any of the performance measures.

The fundamental basis of the WIA Title I performance measures is that the customer is in the labor market at least by the time the customer exits the program. Since this is not the norm for the customers served by the IDOC project, the State respectfully requests the provisions of Section 136 be waived for the project.

Eligible Training Provider and Customer Choice Requirements

The training providers and programs for the IDOC vocational training services are selected in cooperation between IDOC and the schools who apply to participate in the program. IDOC enters into contracts with the schools to provide the instructional services at the correctional facilities. The programs are occupational in nature, and are selected based on the prospects for employment once the trainees are released. Inmates are given some level of choice among the programs that are available at the school, which serves the facility in which they are housed.

The State is requesting a waiver of eligible training provider requirements, Individual Training Account requirements and customer choice requirements under WIA Title I for this program for the following reasons:

1. Although many of the IDOC occupational programs may be certified under Section 122 of WIA (and we will work with those that are not, to facilitate this), we cannot provide assurance that only certified programs will be used for this project. Under Section 122, the State cannot require a Local Workforce Investment Board to place a program on the State list, simply because the State wishes to use that program for a 15 % funded activity.
2. Obviously, an incarcerated customer group cannot be expected to be given free choice from among all of the programs on the State eligible training provider list, as required by Section 134, nor to receive Individual Training Account funds to underwrite their participation in training. We can assure that an effort is made to honor inmate requests for particular training programs, from among those with which IDOC has contracts. In addition, when inmates are transferred from one facility to another,

course credits transfer with them and they are generally afforded an opportunity to complete their training with a different school.

The ITA and customer choice provisions of WIA Title I are based on the notion that the customer is free to choose from among all qualified programs, and is in a position to fully manage his or her participation in training. Since this is clearly not the case for the IDOC client group, the State respectfully requests a waiver of the relevant provisions of Sections 122 and 134, for this project.

We are very concerned that we receive a decision on this waiver request as soon as possible, given the fact that the State needs to provide funding for this project for the second half of the current fiscal year.

Please contact Mr. Herbert Dennis of the Illinois Department of Employment Security at 217-785-6006 for any questions, which you may have about this waiver request.