

This Indiana waiver plan and discrete waiver requests were answered in three letters to the Indiana liaison. These letters are dated December 16, 1999, May 25, 2000 and October 26, 2000. These letters follow:

U.S. Department of Labor

Employment and Training Administration  
230 South Dearborn Street  
Chicago, Illinois 60604  
312/353-0313  
312/353-4474 (FAX)



0.165	2/4/99	12/16/99

December 16, 1999

Mr. Craig Hartzler, Commissioner  
Department of Workforce Development  
10 N. Senate Ave., Suite SE302  
Indianapolis, IN 46204-2277

Dear Mr. Hartzler:

This is in response to your request to waive Section 101(38) of the Workforce Investment Act (Act), and Sections 665.310 and 665.320 of the Interim Final Regulations. The purpose of this waiver request is for the State to "utilize the 25% rapid response set aside for supplementing funds for intensive services and training in local areas."

The Act and Interim Final Regulations currently allow the use of the 25% rapid response set-aside funds to assist local areas experiencing mass layoffs, plant closings and disasters to provide intensive services and training. Section 134(a)(2)(A)(ii) also authorizes the use of rapid response funds for additional assistance to local areas. The Act and interim final regulations are silent as to specificity on the use of the funds and, therefore, does not prohibit the use of the **additional assistance** for intensive services and training. The specific use of the funds to address experiences of disasters, mass layoffs, or plant closings is determined by the local boards and chief elected officials in the local areas. If the local board and chief elected officials have determined that the affected workers will need core services, intensive services and training, then these services can be provided with the supplemental funds. Therefore, a waiver is not needed to allow for the use of the supplemental funds for intensive and training services.

Based on a phone conversation with Nina Babich, we understand that Indiana, upon receipt of this letter, will no longer need to pursue this particular waiver request. Unless we hear from you to the contrary, we will take no further action on the State's waiver request relating to the use of rapid response funds. If you have any questions, please contact Elaine Tom at 312-353-3117.

Sincerely,

BYRON ZUIDEMA  
Regional Administrator

**U.S. Department of Labor**

Assistant Secretary for  
Employment and Training  
Washington, D.C. 20210



MAY 25 2000

Mr. Craig E. Hartzer  
Commissioner  
Department of Workforce Development  
10 North Senate Avenue, Room SE 302  
Indianapolis, Indiana 46204

Dear Mr. Hartzer:

This is in reference to the State's request to waive certain provisions of the Workforce Investment Act (WIA or the Act) statutory and regulatory provisions under the Secretary's waiver authority contained in the Act at section 189(i)(4). The period of the requested waivers is for four program years.

The State's submission consisted of seven waiver requests, three of which have been addressed prior to this letter and did not require a waiver (Requests 1, 2 and 3), and which are being included in this response to confirm our previous determinations. Our disposition of the remaining four waiver requests (Requests 4, 5, 6 and 7) is set forth below.

Waiver #'s 1 and 2. This will confirm information already provided to the State by our Chicago Regional Office concerning the State's requests to permit the exclusion of Social Security Disability Income (SSDI) and work-based learning wages, Waivers 1 and 2 respectively. As indicated to the State, there is not a definition of "family income" under WIA as there was under the Job Training Partnership Act. Neither the Act nor regulations define the term "family income" for the purposes of WIA. We are not going to establish such a definition. States will, however, need to establish such a definition for the purposes of eligibility determinations for "low income" individuals in meeting the 70 percent of the LLSIL. The only qualifier is that the State's definition must be reasonable and may not exclude wages, that is, income earned where an employer/employee relationship exists, as defined by the Fair Labor Standards Act (FLSA). The State may develop its own definition, or it may adopt the Department of Health and Human Services (HHS) income guidelines for poverty level as part of its definition. The State may also adopt the family income definition used for JTPA, in whole or in part, if it so chooses. In doing so, these become the State's guidelines, and not Federal requirements. As the Regional Office has advised the State, a waiver is not necessary

Waiver # 3. No action taken on this request. The Chicago Regional Office sent a letter to Indiana dated December 16, 1999, on the State's request to use the 25 percent rapid response

set-aside funds to supplement funds for intensive and training services to dislocated workers in local areas. The Regional office indicated that a waiver was not necessary since the State already has authority to do what it proposed in its waiver request. Since there has been no follow up on the Region's response from the State, we conclude that the response adequately addressed the State's concern.

Waiver # 4. The State's request to change the definition of "school dropout" at section 101(39) of the Act, to include individuals enrolled in alternative education, is a participant eligibility issue which is excluded from the Secretary's waiver authority, and cannot be waived. For the purposes of determining eligibility for services, the Act at section 101(33), defines "out-of-school youth" (OSY) as eligible youth who are school dropouts or who have received a secondary school diploma or its equivalent, but are basic skills deficient, unemployed or underemployed. Section 101(39) defines the term "school dropout" to mean an individual who is no longer attending any school and who has not received a secondary school diploma or its recognized equivalent. A youth's dropout status is determined at the point of registration.

While recognizing the importance of local flexibility and of serving youth in alternative school settings, the Secretary lacks statutory authority to change or waive statutory provisions relating to participant eligibility. Even if this waiver was permitted, we are not prepared to grant it because expanding the current definition of "school dropout" would have the effect of reducing the required level of services to individuals who meet the statutory definition. To address the State's concern about youth already enrolled in alternative school services, youth enrolled under JTPA Title II-C funds and who transition into WIA services may be counted as "out-of-school" for the purposes of meeting the 30% OSY requirement. With respect to the use of the JTPA 8% set-aside for coordination with school-to-work programs to serve youth already enrolled in alternative schools, the State has authority to use its 15% reserve of WIA youth funds to serve these youth.

Waiver # 5. We appreciate the state's interest in improving the efficiency in the provision of services to out-of-school youth. In keeping with the spirit of ensuring that local areas have the flexibility to design and deliver programs that are based on the needs of their communities, we are granting approval of the State's request to waive the prohibition on Individual Training Accounts (ITA's) for youth at 20 CFR 664.510, conditional on the provision of additional information about the State's guidelines for the use of youth ITA's and assurances that all ten program elements will be available within the local areas that serve out of school youth with ITA's. As part of our conditional approval, we ask the State to address the following: 1) what guidelines will be provided to the local areas on the use of ITAs; 2) how these guidelines will be incorporated into local areas service delivery plans for youth; 3) what criteria will be used for determining when the use of ITAs is appropriate; and 4) what assistance will be provided to youth to assist them in choosing an appropriate service provider.

Under WIA, the focus of youth programs have changed from the provision of short-term, stand alone job training to providing year-round, long term services designed to assist both in-school and out-of-school youth make the successful transition to post-secondary training and careers. WIA requires that local areas must make available a menu of ten program elements, specified at 20 CFR 664.410, to eligible youth in the area. In addition, all youth participants must receive a minimum of 12 months of follow-up services. ITA's generally address only one of the ten program elements, i.e., occupational skills training. We generally do not consider the use of ITAs to be appropriate for youth because, compared with adults, youth often need a fuller array of services over a longer period of time.

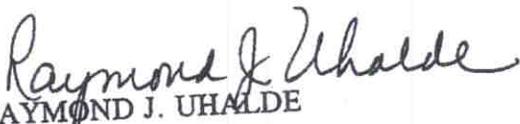
Waiver # 6. We are not approving the request to waive the limit on local level administrative costs. We acknowledge the State's point regarding the survey that was conducted on local administrative cost levels, which included one of Indiana's service delivery areas. In consideration of the survey results and other concerns expressed by the system, the Department revisited the definition of administrative costs in the development of the Final Rule. The definition in the Final Rule, which will be published in the Federal Register shortly, further narrows the classification of administrative costs, and shifts more costs into the program cost category. We believe that the changes will assist the local entities in better managing their administrative costs under the legislative limit. Our position is to defer action on requests to waive the 10-percent limit on local administrative costs pending full implementation of the changes in administrative cost definition. We believe that it is necessary to assess the impact of these changes on the local level administration limit before entertaining any such waiver requests.

Waiver # 7. We are not approving the requested waiver of the 17 core measures of performance required under title I of WIA. These statutory measures are the product of extensive negotiations between the Congressional staff, the Administration and several Intergovernmental Organizations, and are designed to capture the performance of the three funding streams authorized under title I of the Act. Under section 136(d) of the Act, States are required to report on their levels of performance in relation to these measures, as well as other outcomes. Under section 136(d)(3), the Secretary of Labor is required to make the State reports (as well as State-by-State comparisons) available to the general public as well as the appropriate Congressional Committees. As a result, we believe it is important for all States to be represented in these reports. In addition, these measures are essential to one of WIA's key reform principles - Increased Accountability - which may not be waived except in exceptional circumstances under 20 CFR 661.410(c). While we understand the need to develop measures that will capture the performance outcomes of the entire One-Stop system, not just the three title I funding streams, we are not approving your waiver request to replace the WIA measures with the State-developed system measures. We are continuing to work with our Federal partners to examine possible system-wide measures. We encourage the State of Indiana, as well as other States, to take advantage of the authority provided under section 136(b)(2)(C) to

adopt the three suggested system measures as "additional" measures beyond the 17 required core indicators of performance.

We appreciate the State's views and look forward to working with the State as we proceed to fully implement the new program. We will send grant modification documents under separate cover, and will discuss performance improvements as part of our State Plan performance negotiations. We are prepared to entertain other waiver requests that the State may wish submit, consistent with the provisions of the Act and regulations.

Sincerely,

  
RAYMOND J. UHALDE  
Deputy Assistant Secretary



OCT 26 2000

Mr. Craig E. Hartzer  
Commissioner  
Department of Workforce Development  
10 North Senate Avenue, Room SE 302  
Indianapolis, Indiana 46204

Dear Mr. Hartzer:

This is in further reference to my May 25, 2000, letter on the disposition of the State's requests to waive certain provisions of the Workforce Investment Act (WIA or the Act) statutory and regulatory provisions under the Secretary's waiver authority contained in the Act at section 189(i)(4).

The State's original submission included a request for a waiver of the 10% local-level administration cost limit, which was not granted. At the time, we indicated that we were deferring action on requests to waive this limit pending the full implementation of the changes in the administrative cost definition contained in the Final Rule. This is to advise you that we have revisited that position and are granting the State's request, in part, as described below.

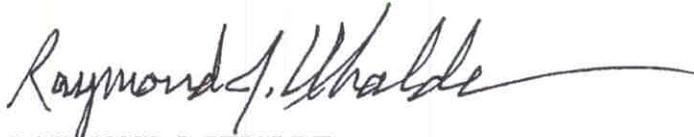
The State requested a waiver, to apply to all local workforce investment areas, of the 10% local administrative cost limitation set forth at WIA section 128(b)(4)(A) and 20 CFR 667.210(a)(2). We are not approving a statewide waiver of the local administrative cost limitation because we do not believe that the limitation generally impedes the ability of local areas to implement their local plans. The definition of administrative costs, described in 20 CFR 667.220, was developed through extensive consultation with our federal, state and local partners, and after extensive field-testing. We believe that this provision presents a reasonable and easy-to-use definition, and expect that experience will show that by applying this definition, most local areas will be able to provide high-quality services while still meeting the 10% administrative cost limitation. However, we acknowledge that circumstances may exist in some local areas which would prevent the area from meeting the 10% limitation despite its best efforts to do so. Therefore, we are providing the Governor authority to apply a waiver of the 10% administrative cost limitation to those local areas that demonstrate a need for the waiver. This approval is granted on condition that the Governor develop standards or criteria for determining whether special circumstances exist to indicate that a particular local workforce investment area will be unable to meet the 10% administrative cost limitation in the absence of the waiver. The Governor must submit the standards or criteria to the Grant Officer for inclusion in the grant file and must notify the Grant Officer of any waivers granted.



The appropriate grant documents including the approved waiver will be forwarded to you under separate cover. If the State still desires to have this waiver, please handle according to the instructions included with the document and return to the Grant Officer.

We appreciate the State's views and look forward to working with the State as we proceed to fully implement the new program. We are prepared to entertain other State and local-level waiver requests that Indiana may wish to submit, consistent with the provisions of the Act and regulations.

Sincerely,

A handwritten signature in cursive script, reading "Raymond J. Uhalde", with a long horizontal flourish extending to the right.

RAYMOND J. UHALDE  
Deputy Assistant Secretary