



APR 17 2002

The Honorable Paul Patton
Governor of Kentucky
Frankfort, Kentucky 40601

Dear Governor Patton:

It is with pleasure that I respond to the Commonwealth of Kentucky's request for a waiver of statutory and regulatory requirements under the Workforce Investment Act (WIA) in accordance with the Secretary's authority to waive certain requirements of WIA Title I, subtitles B and E and sections 8-10 of the Wagner-Peyser Act. This authority is granted to the Secretary by section 189(i)(4)(A) of the Workforce Investment Act (WIA or the Act), and in the implementing regulations at 20 CFR 661.420.

These waivers grant states flexibility in program design for seamless program delivery and improved customer service, in exchange for accountability and agreed-to programmatic outcomes. We hope that these changes will assist your state in meeting its workforce needs and improving programmatic outcomes at the local level and statewide.

We are pleased to be able to respond positively to your request. The following is the disposition of the Commonwealth's waiver submission.

Waiver: Subsequent Eligible Training Provider (ETP) Requirements; 18 month subsequent eligibility requirement (WIA Sec. 122(c)(5) and 20 CFR 663.530)

The Commonwealth's waiver submission (copy enclosed) is requesting a waiver of the time limit on the period of initial eligibility of training providers found at 20 CFR 663.530. Under the waiver, the Commonwealth proposes to postpone the determination of subsequent year eligibility of training providers until January 1, 2004. The Commonwealth indicates that the reason for this request is to give Kentucky more time to obtain performance data on all eligible providers and to effectively implement the subsequent eligibility determination process. The intent of the waiver is to give the Commonwealth's program customers more and better choices among training providers. The Commonwealth believes that the waiver will enhance the implementation of the WIA concepts of consumer choice and accountability. The waiver is written in the format identified in WIA section 189(i)(4)(B) and 20 CFR 661.420(c). Upon review, the Commonwealth's request appears to meet the standard for waiver of requirements relating to key reform principles, as specified at 20 CFR 661.410(c).



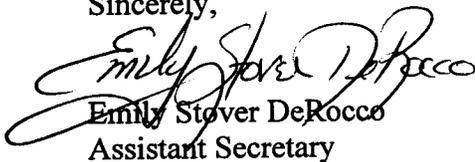
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Accordingly, the Commonwealth of Kentucky is granted a waiver of the time limit on the period of initial eligibility of training providers at 20 CFR 663.530 to extend the period of initial eligibility through January 1, 2004. The effect of this waiver is to extend the period of initial eligibility of providers, and to have the subsequent eligibility determination process completed by January 1, 2004 in preparation for program operations in PY 2004, beginning July 1, 2004.

The granted waiver is incorporated by reference into the Commonwealth's WIA Grant Agreement, as provided for under paragraph 3 of the executed Agreement, and also constitutes a modification of Kentucky's approved five-year strategic plan. A letter is being sent to your state WIA Liaison, which supplements this notification letter and spells out the terms and conditions that apply to the granted waivers. A copy of each letter should be filed with the Commonwealth's WIA Grant Agreement and the Commonwealth's approved five-year plan, as appropriate.

We look forward to continuing our partnership with you and to the achievement of better workforce investment outcomes and the improvement of the lives of many of the residents of Kentucky. We are prepared to entertain other state and local-level waiver requests that the Commonwealth may wish to submit, consistent with the provisions of the Act and regulations.

Sincerely,



Emily Stover DeRocco
Assistant Secretary

Enclosure



Department for Training and ReEmployment
 Cabinet for Workforce Development
 209 St. Clair Street, 4th Floor
 Frankfort, Kentucky 40601

William H. Gaunce
 Commissioner

Allen D. Rose
 Secretary

February 8, 2002

Ms. Emily DeRocco
 Assistant Secretary
 Employment and Training Administration
 United States Department of Labor
 200 Constitution Avenue N.W., Room S2307
 Washington, D.C. 20210

Dear Ms. DeRocco:

Enclosed is the Commonwealth of Kentucky's request for a waiver to extend the period of "Initial Eligibility of Training Providers" through December 31, 2003, postponing the "Subsequent Eligibility of Training Providers" period until January 1, 2004. Kentucky believes that the Workforce Investment Act's intent to empower customers by providing choice in the selection of training providers will not be delivered if the Subsequent Eligibility process is implemented at this time. This time extension will allow eligible customers to continue to choose their training providers and access training. This waiver is filed in accordance with the process described in Section 189(l)(4).

During the requested initial eligibility extension period, Kentucky plans to research existing "substantially similar" measures that can provide customers with useful information to aid in the selection of training providers. Kentucky also intends to re-initiate discussions with state educational entities in an attempt to resolve the inherent conflicts in data privacy regulations that impede performance data collection. In addition, we would be glad to participate in any initiatives that are generating information for the Department of Labor to use during the reauthorization of the Workforce Investment Act.

Kentucky is fully committed to program accountability. In fact, we are in the process of contracting with Charter Oaks, LLC, to develop ways to evaluate the success of the One-Stop System beyond the measures required in the Act. But, while fully committed to the concept of accountability, we would do a disservice to our customers if we allowed problems in data collection for accountability to fracture an increasingly effective training system.



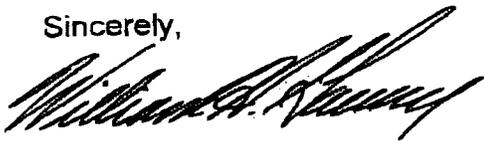
Phone: 502.564.5360 TTY: 502.564.9164
 Fax: 502.564.8974 TTY Toll Free: 888.258.7577
 Web Address <http://dtr.state.ky.us>

Cabinet for Workforce Development — Equal Education and Employment Opportunities MRPD



If you have any questions about the request, please feel free to contact me at 502.564.5360. Thank you for your consideration of our waiver.

Sincerely,



William H. Gaunce
Commissioner

Enclosures

Cc: Allen D. Rose
Anna Goddard
Bill Sanders

**Commonwealth of Kentucky
Waiver Request
Workforce Investment Act
Implementation of Subsequent Eligibility of Training Providers**

The Department for Training and ReEmployment (DTR), as the administrative entity for the Workforce Investment Act (WIA or Act), is requesting a waiver to extend the period of "Initial Eligibility of Training Providers" through December 31, 2003, postponing the "Subsequent Eligibility of Training Providers" period until January 1, 2004. Kentucky believes that the Act's intent to offer customer choice and provide comparable accountability will not be delivered if the Subsequent Eligibility process is implemented. This waiver will allow WIA customers to continue to choose their training providers and access training, while the performance data issues in Subsequent Eligibility are being addressed.

In compliance with WIA Section 189(l)(4)(B) and WIA Regulations 661.42(c), please accept the following as a request for a waiver.

- A. **Statutory Regulations to be Waived:**
WIA Section 122(c)(5) and WIA Regulations §663.530 require a time limit for initial eligibility for training providers, followed by the implementation of a subsequent eligibility process. This waiver requests an extension of the initial eligibility period with implementation of the subsequent eligibility process in 2004.
- B. **Goals to be Achieved by the Waiver:**
- Provide time to investigate whether there are "substantially similar" measures that could be used in place of the required measures.
 - Provide time to offer technical assistance to training providers that are trying to comply with the data collection requirements, and
 - Continue to offer customer choice while working with the Department of Labor to identify possible revisions to this section of the Act.
- C. **State or Local Statutory or Regulatory Barriers:**
There are no existing state or local statutory or regulatory barriers to implementing this waiver request.
- D. **Description of the Goals of the Waiver and Expected Programmatic Outcomes:**
Kentucky's Eligible Training Provider List (ETPL) provides information on over 1,000 training programs that are available to its WIA-eligible customers. Providers include community and technical colleges, public universities, private for profit universities, colleges, schools and agencies and non-profit colleges, schools and agencies. The complete list of providers and programs is available at dtr.state.ky.us.

DTR and the local workforce investment area boards have worked diligently to market the concept of the ETPL to training providers throughout the state. Efforts have been largely successful, with few providers declining to participate. Once the period of initial eligibility began, the local workforce investment boards began to further educate local area training providers on the data collection and performance requirements of the subsequent eligibility process. In a series of state and local forums on the issue, several concerns were identified by the training providers:

- Creating and maintaining a data collection system around the WIA requirements would be **costly and burdensome**.
- The relatively few numbers of WIA-eligible participants accessing training through **Individual Training Accounts did not justify the resources** used in the ETPL process.
- The occurrence of potential violations of **data privacy**, especially in light of the Family Educational Rights Privacy Act (FERPA).
- WIA data requirements would necessitate adding to the amount of data collected from the students, in a time when businesses are trying to **streamline processes and be more customer-friendly**.

These very valid concerns have led many training providers to decide to not apply for subsequent eligibility. Loss of significant numbers of training providers would be **especially catastrophic in rural areas**, where a training provider might be the only organization to provide certain programs in a two or three hundred mile area. This lack of training options could virtually shut down Training Services in some parts of Kentucky. The waiver to extend the period of initial eligibility would keep providers on the ETPL and continue offering customers choices in the selection of their training providers, as envisioned in the Act.

DTR fully understands the need for accountability and supports efforts to ensure that customers are making informed decisions based on quality data. However, when the mandate to provide the data could result in the cannibalization of the entire training system, the interests of the customers have been sacrificed to the requirements of the bureaucracy. **The primary goal of this waiver request is to ensure that the increasing numbers of adults and dislocated workers who need training have a system that can offer them training, including a high degree of customer choice whenever possible.**

Other goals of this waiver request include:

- Use the time extension to identify "substantially similar" and other useful information already being generated by training

- providers. (Ongoing until implementation of subsequent eligibility.)
- To expand Kentucky's ETPL database to include data identified as described above to increase informed customer choice. (Ongoing as needed as data is identified.)
 - To assist local workforce investment area boards to "market" the ETPL to providers who offer high-demand or specialty training. (Ongoing as requested.)
 - To re-initiate discussions with the Council on Post-Secondary Education, the Kentucky Community and Technical Colleges System, and other educational entities to develop potential solutions to the limitations imposed by FERPA and other privacy legislation. (Target March 31, 2002 to hold first session. Ongoing as needed after that session.)
 - Identify promising practices that other states have developed to address these common issues. (Ongoing.)
 - Consider conducting a consumer survey to determine what factors customers use most often and which are the most important in selecting a training provider. (Will evaluate project feasibility and cost by March 31, 2002.)

This waiver is not being requested in order to circumnavigate the accountability requirements of WIA, but to ensure that Kentuckians can continue to access training services in their local areas with the highest degree of informed customer choice possible.

- E. **Description of the Individuals Impacted by the Waiver:**
All customers will be positively impacted by the waiver. Individual customers will continue to have choice in selecting their training providers, employers will continue to have a steady flow of newly skilled workers entering the job market, and training providers will be able to continue serving present and new customers. No individuals will be negatively impacted by the approval of this waiver request.
- F. **Description of the Process to Monitor Progress:**
DTR will be the entity responsible for monitoring the goals established in this waiver request. The Division Director will conduct quarterly reviews on the progress of each goal and address any deficiencies as needed.
- G. **Opportunity for Local Boards to Comment on Waiver Request:**
This waiver request was initiated based on needs identified and information provided by the local area boards. In September of 2001, DTR requested that local area boards begin asking their training providers whether they were planning (and prepared) to submit the required performance by the subsequent eligibility deadline. The results of this informal survey were disturbing at best. Several rural areas would have no

training providers on the ETPL that offered high-demand, high skilled occupational training. Two of the local areas would lose their top suppliers; the institutions that train the majority of their customers.

The Directors of Kentucky's eleven local workforce investment areas hold monthly meetings to discuss issues affecting WIA services. The issues surrounding the ETPL have been discussed at length in the past nine months as the subsequent eligibility deadline approached. DTR agreed to request a waiver as soon as the Secretary of Labor decided whether a "blanket waiver" approach would be used. We have since learned that this approach is not feasible and have assured the local area directors that Kentucky's individual waiver is in process.

This issue was also discussed at a public meeting of the Local Workforce Investment Board Chairs' Forum, a semi-annual event hosted by the Kentucky Workforce Investment Board. This meeting, attended by local board chairs and their directors discussed the need to keep training options open and available for the benefit of both individuals and employers. DTR explained that a waiver would be requested soon, and all attendees agreed that the waiver should be pursued.

H. Public Comment on the Waiver Request:

The Kentucky Workforce Investment Board (KWIB) is conducting its quarterly public board meeting on February 14, 2002. The ETPL issue has been discussed with board members in a public meeting (see above), however, DTR is requesting on-record support for the waiver request from the Board, which includes representation of business and organized labor. DTR will also ask the board to entertain any discussion or public comment on the issue at the meeting. Attached is a letter from Ken Oilschlagler, KWIB Chair, outlining the Board's support.

Kentucky is very proud of the tremendous gains it has made in the implementation of the Workforce Investment Act. We believe that the approval of this waiver will allow us to continue making strides in serving the citizens and employers of Kentucky. Please contact me at 502.564.5360 if you have any questions or need further information.

Ken Oilschlager
Chairman

Nancy Laprade
Executive Director

KWIB
**Kentucky Workforce
Investment Board**
For a 21st Century Workforce

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February 8, 2002

Ms. Emily DeRocco
Assistant Secretary
Employment and Training Administration
United States Department of Labor
200 Constitution Avenue N.W., Room S2307
Washington, D.C. 20210

Dear Ms. DeRocco:

On behalf of the Kentucky Workforce Investment Board, please accept this letter of support for Kentucky's waiver request to extend the initial period of training provider eligibility.

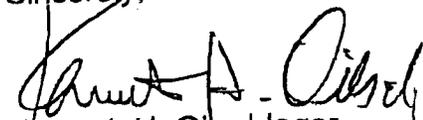
Producing skilled workers to fill high-demand employment openings is critical to Kentucky's economic recovery and future growth. While we have been faced with increasing dislocations throughout the state, the need for skilled workers has never diminished. In fact, the need for higher productivity through advanced technology is even more essential in a challenging business environment.

Implementation of the existing requirements of the "subsequent eligibility" process for training providers would destroy a flourishing Individual Training Account system. Kentucky cannot afford to lose the skilled workers that the Workforce Investment Act delivers to the workforce every year.

The Kentucky Workforce Investment Board, representing a wide variety of business and labor, requests that full consideration be given to this waiver request. The Board is committed to the Act's concepts and hope you will grant this waiver so it can continue developing Kentucky's workforce system.

Thank you for your willingness to consider Kentucky's waiver. Please call me at 502.695-4700, if you have any questions.

Sincerely,



Kenneth H. Oilschlager
Chair, Kentucky Workforce Investment Board
President & CEO, Kentucky Chamber of Commerce



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