

U.S. Department of Labor

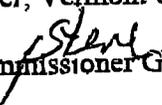
Employment & Training Administration
 John F. Kennedy Federal Building
 Room E-350
 Boston, MA 02203



January 29, 2002

ITGU-OYS-GR-50-1-00-RJA

Mr. Steven M. Gold
 Commissioner
 Vermont Department of Employment and Training
 5 Green Mountain Drive
 P.O. Box 488
 Montpelier, Vermont 05601-0488

Dear  Commissioner Gold:

This is in further response to the two Workforce Investment Act (WIA) waiver requests from the State of Vermont, one pertaining to youth, and one primarily related to customer choice for adult and dislocated worker services. These requests were 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.

We appreciate the state's patience and cooperation in working with our Office to provide supplemental information on the requests so that an informed decision could be made on the state's requests. After discussions with state staff and review of the additional information provided by the Vermont Department of Employment and Training with regard to the initial requests for waivers, we are pleased to be able to positively respond to your requests. The following is the disposition for each of the state's waiver submissions.

Waiver 1: Competitive selection requirements for providers of youth services (Sec.123)

The state's request to waive the section 123 requirement to competitively select providers of the three youth program elements requested by the state (copy enclosed) is granted. The waiver applies to the selection of providers for the youth elements under the following sections: section 129(c)(2)(D) paid and unpaid work experience, including internships and job shadowing, as appropriate; section 129(c)(2)(G) supportive services, and; section 129(c)(2)(I) follow-up services for not less than 12 months after the completion of participation, as appropriate. This waiver does not apply to the selection of providers of summer youth employment opportunities (section 129(c)(2)(C)), which is governed by 20 CFR 664.610. Also, this waiver does not cover the remaining elements at WIA section 129(c)(2) and Vermont must continue to competitively select providers of these services, in accordance with section 123.

In order to provide the state with the opportunity to implement and move toward achieving its goals under this waiver at this point in the current Program Year (PY), the state's request is being granted pursuant to the Secretary's continuing waiver authority for an initial period of 18 months. The duration of this waiver will be January 1, 2002 through June 30, 2003. Additionally, the Regional Office will provide information on models for building and strengthening partnerships to assist the state's implementation of the granted waiver.

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<http://www.dolera.gov/regions/reg01bos/>

The goal of WIA is to provide high quality, results oriented training and resources to help enhance America's Workforce and, WIA aims to leverage successful programs and increase the scope of the resources network by including non-traditional providers and partners. As you have stated in the waiver request, partnerships are the backbone of the youth delivery system in Vermont. Accordingly, the Regional Office will provide information on models for building and strengthening partnerships to assist the state's implementation of the granted waiver.

A waiver, of the competitive selection requirements for the three program elements described above, is being granted because a review of the state's performance measures indicate that the state reported significantly lower levels in two of the seven youth measures when compared to their respective negotiated performance levels. Vermont's negotiated performance level for Older Youth Entered Employment Rate is 72% and the Older Youth Credential Rate is 50%. The WIA - Quarterly Summary Report through June 30, 2001, indicates that actual levels reported by the State were as follows: Older Youth Entered Employment Rate (61.3%), and the Older Youth Credential Rate (14.7%). It is expected that Vermont's performance on these measures will improve as a result of this waiver.

Under the applicable regulations the following apply to the granted waiver:

1. Continued approval of this waiver shall be contingent on improvement in the quality of services and performance levels for youth programs in the state;
2. Regional Office staff shall periodically review the progress of the state with regard to monitoring the progress in implementing the waiver and improvement of services and performance; and
3. The Regional Office will review Vermont's Annual Performance Report to determine the effects of the waiver. Should this review or a combination of reviews show that neither the quality of services nor program performance levels have significantly improved since the awarding of this waiver, the Regional Office may recommend to the Secretary that the waiver be withdrawn and that the state be required to competitively select providers for these three elements immediately thereafter.

The Regional Office will continue to work closely with the state to ensure quality programs, determine that all program elements will be widely available to youth enrolled in WIA services and to conduct periodic reviews of the effects of the waiver. Although Vermont has not met the negotiated performance levels for two of the seven youth measures, as noted above, we expect that because of the waiver the state's performance will show significant improvements compared to the performance of PY 2000, particularly in the areas of older youth in unsubsidized employment and credential attainment for older youth.

Waiver 2: Subsequent Eligible Training Provider (ETP) Requirements; All student reporting requirement (WIA Sec. 122(d)(1)(A)(i) and 20 CFR 663.535(c)(1))

The State was advised early on through our Office that this was a sensitive issue, with broad policy implications, and would require careful consideration. Given the nature of the request, there was also the concern that the requirements in question might be exceptions to the Secretary's general waiver

authority. The state was also advised that the ETP requirements had been raised as a significant issue in the WIA Readiness Reviews, and that there were workgroups, consisting of NO, RO and state and local stakeholders, working on strategies to address problems identified in the reviews. The state was informed that the concerns they raised would be included in the ETP workgroup discussions, and that a decision on the waiver request might be delayed pending the outcome of these discussions. While the long-term prospect may improve based on remedies proposed by the workgroups to address ETP issues, there are waiver options available to assist Vermont in the short-term that are within the Secretary's authority to grant, and which are not inconsistent with proposed workgroup remedies:

Based on the state's current request (copy enclosed), we are not approving the request to waive the "all student" reporting requirement for subsequent eligibility at WIA section 122(d)(1)(A)(i) and 20 CFR 663.535(c)(1), at this time. This particular requirement is subsumed in the broader policy determination with regard to the overall eligible training provider impediments to full implementation of the states' five-year strategic plans, as identified by the WIA Readiness Workgroups. Pending the national resolution of these issues, we are not prepared to waive such a critical component of the WIA key principles of increased accountability and customer choice.

Although we are not now prepared to waive this particular provision, we believe that there is some confusion in the field on what potential providers must do to meet this requirement. We will therefore, under separate cover, be providing your Office with some clarification on this issue, including some alternative options to satisfy this requirement, which may not require a waiver. Additionally, we wish to assist the state in addressing the issue of declining eligible training providers, which directly impacts on customer choice in accessing training services, one of the key reform principles of WIA.

Accordingly, the state is granted a waiver of the 18-month requirement at 20 CFR 663.530(c) for subsequent eligibility through June 30, 2003. The waiver approval is contingent on the state providing a plan for developing a workable subsequent eligibility process, including a time line, for coming into compliance with the subsequent eligibility requirements at WIA section 122. The effect of this waiver is to extend the period of initial eligibility of providers through PY 2002.

We believe that the optimum approach at this time is to grant the state the waiver described above on an interim basis, until such time as we reconcile the broader ETP policy issues. The 18-month time frame at 20 CFR 663.530 is an administratively imposed requirement, which was originally intended to ensure provider accountability. The effect, however, has been to adversely affect customer choice. When the Final Rule was issued, we thought 18 months would be a reasonable time period to implement the statutory requirements for subsequent eligibility and did not realize how difficult setting up this system would turn out to be for many states and local areas.

The granted waivers are incorporated by reference into the State of Vermont's WIA Grant Agreement, as provided for under paragraph 3 of the executed Agreement, and serve as a Memorandum of Understanding, as specified at 20 CFR 661.420(e)(3), and also constitute a modification of Vermont's approved five-year Strategic Plan. This letter supplements Assistant Secretary DeRocco's 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 state's WIA Grant Agreement and the state's approved five-year Plan, as appropriate.

We hope that these waiver actions assist the state to remove obstacles, which impede the state's implementation of its strategic plan, and thereby improve the state's capacity to provide quality

services to all Vermonters. Enclosed for your information is a copy of the waiver notification letter from Assistant Secretary DeRocco to Governor Dean.

Sincerely,



ROBERT J. SEMLER
Regional Administrator

Enclosures