



Tom Dowd
Regional Administrator
U.S. Department of Labor
Employment and Training Administration
The Curtis Center
170 S. Independence Mall West
Suite 825 East
Philadelphia, PA 19106

Dear Mr. Dowd:

Enclosed please find two separate waiver requests related to the Workforce Investment Act. The first request involves the eligible training provider provisions of the Act. The second request deals with the twenty percent (20%) limitation placed on the transfer of funds between the adult and dislocated worker funding streams. Each waiver has been provided in hard copy and on a formatted computer disk using Microsoft Word.

If after you and your staff have had the opportunity to review these waiver requests you have questions or comments, or require additional assistance or information, please do not hesitate to contact me.

Thank you for the opportunity to make this application.

Sincerely,

A handwritten signature in black ink, appearing to read "Dave", written over a horizontal line.

David H. Lieving
Director

Governor's Workforce Investment Division

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STATE OF WEST VIRGINIA: REQUEST FOR WAIVER

Introduction

The State of West Virginia is seeking a waiver of certain provisions of Section 133(b)(4) of the Workforce Investment Act of 1998 (hereinafter referred to as “the Workforce Investment Act” or “the Act”). Section 133(b)(4) allows Local Workforce Investment Boards to transfer up to twenty percent of their funds between the adult and dislocated worker funding streams upon approval by the Governor. For reasons detailed herein, West Virginia seeks a waiver of the twenty percent limitation set forth in Section 133(b)(4) in order to allow Local Workforce Investment Boards in the state to transfer up to fifty percent of applicable funds between the adult and dislocated worker funding streams, subject of course to the approval of all such transfers by the Governor based on criteria established by the Governor through the State Workforce Investment Council and the Governor’s Workforce Investment Division (GWID).

Allowing the Local Workforce Investment Boards (hereinafter referred to as “Local WIBs”) to transfer more funding between the adult and dislocated worker funding streams provides them with greater flexibility to place funds in areas of critical need. Therefore, service to the people of West Virginia, the ultimate customers of the system, will be enhanced. That is why it is critical for the State to request a waiver of the limitations placed on these fund transfers in Section 133(b)(4) of the Act. Of course, in requesting this waiver, the State of West Virginia recognizes and acknowledges the fact that such fund transfers by the Local WIBs may not be extended to include those funds allocated to the local regions for youth employment and training activities.

Background

West Virginia features a variety of local economic drivers and a host of geographic features resulting in varied physical terrain. In an effort to reflect these numerous economic and physical differences, West Virginia’s fifty-five counties are divided into seven local workforce investment regions. **(See Attachment A)**. All seven local regions, led by their respective Local WIBs, have worked long hours to provide quality workforce investment opportunities to their citizens through the “one-stop shop” concept embodied in the WORK4WV Career Centers that continue to develop and expand around the state. The greatest challenge in providing quality employment and training services throughout such a diverse state is how to implement the tenets of the Workforce Investment Act in a way that accounts for the wide variance in local customer needs, economic drivers, resources and financial constraints.

Since the inception of the Workforce Investment Act, West Virginia has focused on creating a workforce investment system predicated on the concept of employment and training services designed, delivered and administered at the local level. This approach reflects the belief that local government and business leaders are in the best position to determine the needs of its local citizens, particularly in a state as economically and geographically diverse as West Virginia. These local leaders have, in many cases,

struggled with the limitations placed on their ability to channel funds to areas of critical need as a result of Section 133(b)(4) of the Act. Therefore, the State of West Virginia believes there is a need to allow Local WIBs greater flexibility in seeking the Governor's approval to transfer funds between the adult and dislocated worker funding streams at levels up to fifty percent of applicable funding.

Specific Information Regarding the Requested Waiver

Section 189(i)(4) permits individual Local WIBs or entire states to seek waivers of provisions of the Workforce Investment Act and sets forth information that must be provided in seeking such a waiver. The following information is provided in accordance with Section 189(i)(4) and the accompanying regulation, 20 CFR 661.420.

(1) Statutory or Regulatory Requirements For Which a Waiver is Requested

West Virginia seeks a waiver of certain provisions contained in Section 133(b)(4) of the Workforce Investment Act, which states as follows:

A local board may transfer, if such a transfer is approved by the Governor, not more than 20 percent of the funds allocated to the local area ... for a fiscal year between-

- (A) adult employment and training activities; and
- (B) dislocated worker employment and training activities.

West Virginia seeks a waiver of the twenty percent limitation described above in order to allow local WIBs the ability to request approval from the Governor for fund transfers of up to fifty percent between the adult and dislocated worker funding streams. This will allow Local WIBs more flexibility in transferring funding to meet critical needs in the local region, a concept that directly compliments the philosophy of local decision making and customer focused service delivery espoused by the Workforce Investment Act.

(2) Actions by the State or Local Area to Remove State or Local Statutory or Regulatory Barriers

West Virginia initially implemented the requirements of the Workforce Investment Act as directed by federal law and regulations. No accompanying or subsequent Executive Order or state statute has included any additional limitation or requirement impacting the waiver requested. Likewise, no Local WIB has placed additional limitations or requirements on its funding that would impact the requested waiver. Therefore, no state or local barriers have been erected nor need to be removed to allow for funding transfers of up to fifty percent between the adult and dislocated worker funding streams with approval by the Governor. The only barrier to such transfers is the limitations placed on the Local WIBs by Section 133(b)(4) of the Act, which is the reason for requesting this waiver of the twenty percent transfer limitation.

(3) Goals to be Achieved by the Waiver and Expected Programmatic Outcomes

The Workforce Investment Act embodies seven key principles, including the principle of state and local flexibility. This concept involves providing state and local systems the flexibility and freedom to meet locally determined needs. A waiver of the twenty percent limit on fund transfers described in Section 133(b)(4) of the Act would provide such state and local flexibility. Additionally, the waiver of the twenty percent limitation would allow the State and its Local WIBs to achieve goals such as greater effectiveness and increased efficiency in the delivery of services to the citizens of West Virginia.

Allowing Local WIBs greater flexibility in fund transfers between the adult and dislocated worker funding streams will increase the effectiveness and efficiency of workforce investment services in West Virginia. To date, Local WIBs have been constrained in the delivery of services by the restraints placed against the transfer of funds between the adult and dislocated worker funding streams. In many cases, Local WIBs have obligated all adult training funds and been forced to place qualified individuals on a waiting list for services while at the same time having significant amounts of dislocated worker funding available but unused. This situation has occurred even after the transfer of the twenty percent permitted by statute. While it has not yet occurred, it is also conceivable that the reverse situation could arise. Dislocated worker funding may be exhausted, yet adult funding remains that could be utilized to serve additional qualified individuals.

Larger transfers of up to fifty percent of funding between the two streams in question would allow Local WIBs to extend services to additional qualified applicants in one stream when demand dictates. Of course, the State and Local WIBs must remain attentive to the needs of both adults and dislocated workers and avoid under-serving one population at the expense of the other. For example, A Local WIB must work to avoid situations where a large dislocation occurs and no funding is available to serve the affected individuals due to a transfer of funds to serve those in the adult funding stream. However, by keeping such transfers to a maximum of fifty percent of funds, the stage will be set for Local WIBs to place funds where they are needed the most without jeopardizing service to any customer category.

Clearly, allowing larger transfers of funding between the adult and dislocated worker funding streams will allow Local WIBs the ability to effectively and efficiently increase the number of individuals served by funneling additional monies to where there are the most qualifying applicants. Thus, the effectiveness and efficiency of workforce investment programs will be increased by allowing the State as a whole to serve more of its citizens in a fiscally efficient manner.

Increased effectiveness and efficiency, as well as service to more individuals, will greatly impact the success of Workforce Investment Act programs in West Virginia. The

State and its Local WIBs will benefit from this increase in the number of individuals served by recording better performance numbers that will allow the State and its Local WIBs a greater chance of reaching the goal of meeting or succeeding the State's Negotiated Performance Levels. However, just as important is the fact that Local WIBs will have the opportunity to craft their workforce investment visions in a way that will lead to providing the best possible system for West Virginia's citizens regardless of the outcome of the prescribed performance measures.

(4) Describe the Individuals Affected by the waiver

The individuals affected by the waiver in question would be the adult and dislocated worker customers, as well as the Local WIBs in West Virginia. However, the affects of this waiver are believed to be positive for all those involved.

Those citizens of West Virginia who qualify as adult and/or dislocated worker customers under the Workforce Investment Act will benefit from the delivery of a more effective and efficient workforce investment system. Customers will also benefit from the fact a Local WIB can transfer more significant amounts of money among the applicable funding streams, thus allowing the Local WIBs to serve as many customers as possible in an effective, efficient manner.

The Local WIBs will also benefit from the ability to transfer up to fifty percent of available funding to the funding stream where need is greatest. In this way, the Local WIBs will be able to serve more customers more effectively and efficiently, thus leading to increased performance levels. This will not only provide better service to the customers of the West Virginia workforce investment system, it will allow the Local WIBs to compete more favorably for state incentives and grant opportunities from outside sources and continue to increase the benefits provided to West Virginia and its citizens.

(5) Process for Providing Oversight of Implementation of the Waiver Requested

(A) Monitoring Progress of Waiver Implementation

The West Virginia Development Office, Governor's Workforce Investment Division, is the state administrative entity for Workforce Investment Act programs. As such, the Governor's Workforce Investment Division seeks to do all it can to provide the Local WIBs in the state with the ability to create the most flexible, effective and efficient systems possible for the delivery of workforce investment services. The requested waiver of the twenty percent fund transfer limitation in Section 133(b)(4) is a key component in providing the Local WIBs the tools necessary to create the best possible service for West Virginia's citizens.

The Governor's Workforce Investment Division will play the lead role in monitoring the implementation and impact of the requested waiver through a combination of reporting, monitoring and evaluation. Local performance measures and

reports on the numbers of participants served will be evaluated to determine the impact of the waiver at issue. Governor's Workforce Investment Division staff currently meets monthly with the Executive Directors of the Local WIBs, a forum that will provide an avenue for a discussion of the progress of waiver implementation, positive or negative impacts, and any obstacles that are encountered. Fiscal integrity and impact will be assessed through continuation of the current system of on-site monitoring visits and submission of local reports. The State will also review applicable policies and procedures and modify them accordingly when and if modifications are necessary.

As part of its duties in overseeing the implementation of the requested waiver, the Governor's Workforce Investment Division is cognizant of the fact that efforts must be made to ensure that neither adult nor dislocated worker services be compromised. Therefore, the Governor's Workforce Investment Division intends, through separate policy, to set forth guidelines under which transfer requests are to be made. For instance, these guidelines would, for transfers to the adult category, address issues such as: Local WIB efforts to attract and serve dislocated workers, Local One-Stop efforts to attract and serve dislocated workers, and Local WIB plans to ensure uninterrupted service to both adults and dislocated workers following approval of such transfers.

(B) Providing Notice to Any Local Board Affected by the Waiver

Prior to drafting this proposed request for a waiver, the idea was discussed at the regular monthly meeting of State staff and the Executive Directors of the Local WIBs. Since this proposed waiver potentially impacts all Local WIBs in the state, additional notification was provided to all local boards in the manner described in sections 5(C) and (D) below.

(C) Providing Any Local Board Potentially Affected by the Waiver the Opportunity to Comment

All Local WIBs in West Virginia may potentially be impacted by the proposed waiver. Therefore, all Local WIBs have had an opportunity to comment on the proposed waiver. Discussions have already occurred between the State and the Executive Directors of the Local WIBs, and the monthly meeting between these two groups provided one avenue for the Local WIBs to convey comments on this issue. Local WIBs and individual members also had the opportunity to comment as part of the public comment period described in Section 5(D) below.

(D) Process to Ensure Meaningful Public Comment

In an effort to provide the broadest level of input possible, the State printed notices in various newspapers located throughout the state. In addition, the State informed appropriate interested parties such as Local WIBs, Local Chief Elected Officials, and labor organizations of this proposed waiver request. Following the close of a thirty day comment period on June 21, 2002, written comments were evaluated and

incorporated into the final draft of this waiver request where appropriate. Only two comments were received, copies of which are attached.

Conclusion

The State of West Virginia, for the reasons contained herein, believes it is in the best possible interest of the state and its citizens to seek a waiver of the twenty percent limitation placed on fund transfers between the adult and dislocated worker funding streams on the part of its Local WIBs by Section 133(b) (4) of the Workforce Investment Act. The State seeks a waiver in order to allow its Local WIBs the ability to transfer up to fifty percent of funds between the two applicable funding streams, subject to the approval of the Governor. Such an approach will allow the flexibility needed by Local WIBs as they seek to deliver the most effective and efficient system of workforce investment possible for the citizens of West Virginia. This will not only allow the Local WIBs to serve more customers, it will provide them with a greater ability to meet or exceed the State's Negotiated Performance Levels and to improve the lives of more West Virginia citizens. Thus, the State looks forward to implementing the requested waiver in accord with the principles of the Workforce Investment Act and the monitoring tools outlined above.

Human Resource Development Foundation, Inc.
Human Resource Development and Employment, Inc.

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 Morgantown, West Virginia 26505



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June 20, 2002

Mr. Robert A. Hogue
 Assistant Director
 Governor's Workforce Investment Division
 Capitol Complex
 Building 6, Room 617
 Charleston, WV 25305-0311

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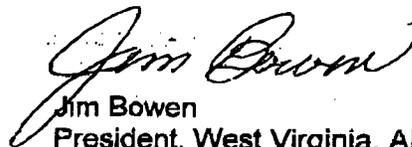
Dear Mr. Hogue:

This letter conditionally supports the flexibility needed to increase the transfer of funds for a fiscal year between: a) adult employment and training activities; and, b) dislocated worker employment and training activities. However, there needs to be safeguards in place, which would prevent the abuse of allocated dislocated worker funds being transferred to the adult category. The waiver request stated that a significant amount of dislocated worker funding is unused.

Two factors can be attributed to these funds not being utilized. First, in some instances, the local WIBs have not been administratively forceful in requiring the One-Stop Centers to document their performance in recruiting dislocated workers. Second, in some instances, WIBs have not made a genuine effort to secure program services, which would assist the dislocated worker. Allocating a large transfer of funds between the adult and dislocated worker is too dramatic. Considering the likelihood of dislocated worker funds being committed for adult ITAs would in essence spend funds that may be needed for dislocated worker services prior to new allocations being made to this funding category in the next fiscal year. The increase of funds requested to be transferred should only be allocated under extreme circumstances and the need supported by appropriate documentation. This requested transfer of funds between the adult and dislocated worker funding streams appear to be a means for the educational system and private providers to leverage more money for ITAs. A 30 percent increase is too dramatic and will have a direct impact on dislocated worker funds that are needed to serve this population. Transferring the dislocated worker funds to adults will provide less money for essential services and programs that would lead to employment of dislocated workers who need immediate employment.

In summary, this letter is to request a milder approach to transfer the dislocated worker funds to the adult category. The State AFL-CIO is very concerned about providing services, training and employment to not only dislocated workers, but adults as well. Every caution to assure the transfer of funds from one category to another would not create a hardship for the category from which the funds have been transferred.

Very truly yours,


 Jim Bowen
 President, West Virginia, AFL-CIO

JB/HRK/anh
 aft 4009, afl-cio

Serving the Needs of West Virginians



Robert Hogue

From: PLeinbach@aol.com
Sent: Friday, June 21, 2002 2:57 PM
To: rhogue@wvdo.org
Subject: comments on waiver

Dear Mr. Hogue

Issue: Waiver to allow the transfer of up to 50% of funds between adult and dislocated workers.

Comment: The failure to expend dislocated funds cannot be assumed to be the lack of eligible dislocated workers. Rather, all aspects of the failure to serve dislocated workers need to be examined by the State WIB and the Local Wib's.

(1) Some areas of concern would be "why are dislocated workers not applying for training funds." Possibly current training providers under the ITA system are not responding to the training needs of the dislocated worker. Traditionally, dislocated workers are in need of short term training to return them to work as soon as possible. They are not interested in 2 and 4 year programs.

(2) Have the local WIB's and One Stop's demonstrated outreach effectiveness in recruiting dislocated workers? It is possible that the transition to the One Stop concept has not initially improved outreach but to the contrary hurt (if only in the short term) outreach. Some providers have had experiences where the providers recruitment has shown to be far more effective than that of the local One Stop.

Although some transfer of dislocated funds to adult funding may be justified and reasonable, it is my opinion that any transfer of dislocated funds be conservative in nature.

Sincerely,

Phillip Leinbach
WIB VI Board Member
HRDF
1644 Mileground
Morgantown, WV 26505

STATE OF WEST VIRGINIA: REQUEST FOR WAIVER

Introduction

The State of West Virginia is seeking a waiver of certain provisions of Sections 122(c) and (d) of the Workforce Investment Act of 1998 (WIA). Sec. 122 (d) requires training providers to submit verifiable program specific information on the outcomes of “all individuals” and “WIA participants” who attend the training program. Sec. 122 (c) stipulates that training programs must annually meet minimum acceptable levels of performance established by the Governor, as demonstrated utilizing quarterly wage records consistent with Sec. 136, to maintain subsequent eligibility for WIA funding.

West Virginia is seeking waivers on two provisions of subsequent eligibility:

1. Removal of the requirement that training programs must meet the “all individual” performance level established by the Governor to retain eligibility.
2. Elimination the of performance verification requirement for “all individuals”.

Background

Waiver provision 1.

Sec. 122(c) requires the Governor to take into consideration recommendations of local Workforce Investment Boards, training providers, interested members of the public, representatives of business and labor organizations when establishing procedures for determining subsequent eligibility procedures for training programs. The Act allows the Governor the latitude to establish minimum performance levels in a manner that will allow for a diverse array of training programs while ensuring customers have access to programs with demonstrated effectiveness in preparing individuals for employment opportunities in demand occupations.

Since the Act is silent on what minimum levels of performance are acceptable for a training program to retain eligibility, West Virginia desires to remove the performance requirements for “all individuals” when determining subsequent eligibility. Training providers will be required to report on each of the “all individuals” performance measures listed in Sec. 122(d), plus supply the methodology used to collect the reportable data; however, this will be informational data made available to customers, not used to determine subsequent eligibility.

In keeping with the key reform principles of the Act, West Virginia will evaluate a training program’s eligibility by requiring performance levels be met on West Virginia funded “WIA participants”. Programs not meeting the “WIA participant” performance levels established by the Governor will be removed as an eligible WIA funded training program.

Waiver provision 2.

Sec. 122(c) stipulates that program specific performance information for “all individuals” and “WIA participants” specified at Sec 122(d) be verified utilizing quarterly wage records in a manner consistent with Sec. 136. Since West Virginia is requesting a waiver on the “all individual” performance requirements, the State also seeks to eliminate the verification of “all individual” data. The consumer report of available WIA approved programs will indicate that the “all individual” data was not verified by the State, thus informing the customer that the data shown is what was reported by the training provider. The consumer report also will provide the methodology used by the training provider to collect and report on the “all individual” data.

The State will verify the “WIA participant” performance data utilizing quarterly wage records and indicate the WIA performance verification on the consumer report.

West Virginia believes the waiver of these two provisions will allow the State and local Workforce Investment regions to maintain an adequate number of quality programs with a wide variety of occupational training opportunities for customers. The State also feels that Sec. 122(c) grants to the Governor the authority to establish minimum performance levels in a manner to ensure customers have information and access to a wide variety of training options; and within this authority the Governor has the discretion to determine which performance criteria will be used to evaluate the effectiveness of training programs, thus keeping with the key reform principles of the Act.

Specific Information Regarding the Requested Waiver

Section 189(i)(4) permits individual local WIBs or states to seek waivers to provisions of the Act and sets forth general information that must be provided in seeking such a waiver. The following information is provided in accordance with Sec.189(i)(4) and 20 CFR 661.420.

(1) Statutory or Regulatory Requirements For Which a Waiver is Requested

West Virginia is seeking waivers on two provisions of subsequent eligibility contained in Sec. 122(c) and (d):

1. Removal of the requirement that training programs must meet the “all individual” performance level established by the Governor to retain eligibility.
2. Elimination of the performance verification requirement for “all individuals.”

(2) Actions By the State or Local Area to Remove State or Local Statutory or Regulatory Barriers

Amendment of the State’s subsequent eligibility policy to reflect the “all individual” performance categories submitted by training providers will not be verified or used to evaluate training programs for subsequent eligibility.

Local WIBs may require higher levels of performance than those established by the Governor as permitted in Sec. 122(c)(6)(B), which could include evaluating the “all individual” categories against locally established performance levels. Local WIBs that

establish “all individual” performance levels also could establish a method of verification of the “all individual” data submitted by the training provider.

(3) Goals to be Achieved by the Waiver and Expected Programmatic Outcomes

In keeping with the key reform principles of the Act, one of the main goals is to allow customers to make an informed choice and to maximize quality occupational training opportunities available. West Virginia believes the waiver of these two provisions will advance this goal by removing barriers that will allow more programs to meet subsequent eligibility requirements while maintaining quality training programs by evaluating and verifying only the “WIA participant” performance data.

West Virginia implemented subsequent eligibility January 1, 2002, requiring training providers to submit renewal applications containing performance outcomes on programs that were approved during the initial eligibility period. The State had a liberal subsequent eligibility policy in regards to the performance levels established by the Governor for subsequent eligibility. This policy included the requirements of meeting the “all individual” and “WIA participants” criteria outlined in Sec. 122(d)(1)(A), allowing programs that fail to meet one of the “all individual” and one of the “WIA participant” categories remain on the State approved training list.

More than 500 programs, about 1/3 of the programs approved under initial eligibility, have not been received at the State for approval under subsequent eligibility. It is unclear whether these programs were not approved at the local WIBs or if training providers decided not to apply for subsequent eligibility.

In addition to these 500 programs, about 280 programs were approved that did not meet the established “all individual” performance levels (based on the data submitted by the provider) or in the case of a couple of colleges were not able to distinguish students attending at different training locations in their computer systems. The State opted to approve these 280 programs if the programs met the established “WIA participant” performance level. Had the State not made this adjustment, around 1/2 of the initial programs would not be available to customers.

At this time, programming is being developed for the verification of “WIA participants” utilizing quarterly wage reports. Once this is accomplished, the number of available programs could conceivably be reduced farther. West Virginia does not have an abundance of training providers and can not afford to loose very many programs while maintaining enough programs to provide a diverse choice for eligible customers. The State must make adjustments, when necessary, to the subsequent eligibility performance levels in order meet this key reform element of adequate customer choice.

(4) Describe the Individuals Impacted by the Waiver

Acceptance of this waiver request will make available to the eligible customer a larger array of diverse occupational training opportunities, one of the key concepts of the transportability of the Individual Training Accounts voucher system.

Secondly, approval of the waiver should remove some of the reporting burden and concerns of training providers who desire the opportunity to provide services to the WIA customer. Several providers have indicated they don't have the resources to justify the reporting requirement when there is no guarantee WIA customers will choose their programs. While some programs attract large numbers of WIA participants, many more programs may have very few if any WIA participants. West Virginia would like to keep programs that are sparsely populated with WIA participants available to eligible customers.

Many providers have expressed concern about releasing the Social Security numbers of individuals who are not WIA customers; these include non-educational as well as educational institutions covered under the exception in the Family Educational Rights and Privacy Act of 1974. Elimination of the verification of "all individuals" should alleviate these concerns resulting in more providers willing to participate.

(5) Process for Providing Oversight and Opportunity for Comment of the Waiver Request

Monitoring

The West Virginia Development Office, Governor's Workforce Investment Division (GWID) is the State's administrative entity designated as the agency responsible for the dissemination of eligible training programs to the one-stop system within the State. GWID will routinely monitor the number and diversity of programs approved for the State list to ensure there are an adequate quantity and that the quality of the programs meet the key reform principles of the Act. GWID, with input from the local WIBs, will make adjustments to the performance levels as necessary to ensure WIA eligible customers have access to a wide variety of training programs while holding training providers accountable for meeting established "WIA participant" performance for each training program.

Opportunity for Comment

This waiver request has been provided to and discussed with the Executive Directors of the local WIBs. Since this waiver request will impact all local WIBs in the state, the waiver will be made available to local elected officials, local WIB members, businesses, labor organizations, the public and any other interested parties. The State will provide notices in the major newspapers within the state requesting comments on the waiver request and that written comments be addressed to GWID. Following a 30-day comment period, all comments received will be evaluated and the waiver request will be revised, as appropriate, based on the validity of the written comments. All comments received will be attached to the waiver request when submitted to the Department of Labor.

GWID e-mailed the waiver request to each of the local WIBs' Executive Directors requesting the waiver be forwarded to each WIB member and to each LEO. Notices ran in 16 local newspapers informing the public that the waiver could be viewed at the GWID website and that interested parties could provide written comments during a 30-day comment period. --- No comments were received.

Conclusion

The State of West Virginia believes this waiver will not infringe upon the key reform principles provided in the Act and that approval will enhance the opportunity for the WIA eligible customers to select training programs from a diverse array of training programs.