



NOV 10 2009

The Honorable Joe Manchin III
Governor of West Virginia
State Capitol
Charleston, West Virginia 25311

Dear Governor Manchin:

As part of West Virginia's modification to the State Plan for Title I of the Workforce Investment Act (WIA) and the Wagner-Peyser Act, the State submitted waiver plans to request that the State's waivers of statutory and regulatory requirements under WIA be approved for the remainder of Program Year (PY) 2009 (copy enclosed). These requests are written in the format identified in WIA section 189(i)(4)(B) and 20 CFR 661.420(c) and appear to meet the standard for approval at 20 CFR 661.420(e). The following is the disposition of the State's submission. This action is taken under 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.

In a letter dated June 15, 2009, ETA granted West Virginia approval of the following waivers through June 30, 2010:

- Waiver of the prohibition at 20 CFR 664.510 on the use of Individual Training Accounts for older and out-of-school youth;
- Waiver of the provision at 20 CFR 663.530 that prescribes a time limit on the period of initial eligibility for training providers;
- Waiver to permit the State to replace the performance measures at WIA Section 136(b) with the common measures;
- Waiver of WIA Section 101(31)(B) to increase the employer reimbursement for on-the-job training; and
- Waiver of the required 50 percent employer contribution for customized training at WIA Section 101(8)(C).

The approvals for these waivers remain in effect. The letter dated June 15, 2009 granted temporary extensions of the remainder of West Virginia's waiver requests.

The previous approval of the extensions is hereby terminated and replaced by decisions set forth in this letter.

Requested Waivers

Requested Waiver: Waiver of WIA Section 133(b)(4) to increase the allowable transfer amount between Adult and Dislocated Worker funding streams allocated to a local area.

The State is requesting a waiver to permit an increase in the amount a state is allowed to transfer between the Adult and Dislocated Worker funding streams. The State is granted this waiver through June 30, 2010. Under the waiver, transfer authority will be limited to 50 percent. This limitation provides states flexibility while ensuring consistency with Congressional intent regarding the level of funding appropriated for the WIA Adult and Dislocated Worker programs. As stated in ETA Training and Employment Guidance Letter (TEGL) No. 14-08, Section 19, issued on March 18, 2009, this waiver does not apply to funds made available through the American Recovery and Reinvestment Act of 2009. However, the State is permitted to transfer up to 30 percent of ARRA funds between programs under WIA and under the Department of Labor Appropriations Act of 2009. This authority is discussed in TEGL No. 14-08, change 1.

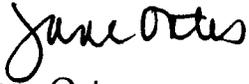
Requested Waiver: Waiver of the reallocation provisions at WIA Sections 128(c)(2) and 133(c)(2), and 20 CFR 667.160.

The State is requesting a waiver of the reallocation provisions at WIA Sections 128(c)(2) and 133(c)(2), and 20 CFR 667.160. ETA denies this waiver. ETA believes that maintaining the statutory provisions of the law ensures that local areas have sufficient time to obligate and expend funds in a manner that best supports the needs of the customers in that area.

The approved waiver is incorporated by reference into the State's WIA Grant Agreement, as provided for under paragraph 3 of the executed Agreement, and this constitutes a modification of the State Plan. A copy of this letter should be filed with the State's WIA Grant Agreement and the approved State Plan. In addition, as required by TEGL No. 14-00, Change 3, the State should address the impact its waivers have had on the State's performance in the WIA annual performance report, due on October 1 of each year.

We look forward to continuing our partnership with you and achieving better workforce outcomes. If you have any questions related to the issues discussed above, please contact Lenita Jacobs-Simmons, the Regional Administrator for Region II, at 215-861-5201 or Jacobs-Simmons.Lenita@dol.gov.

Sincerely,



Jane Oates
Assistant Secretary

Enclosure

cc: Linda Avila, Federal Project Officer for West Virginia, ETA Philadelphia
Regional Office
Lenita Jacobs-Simmons, Regional Administrator, ETA Philadelphia Regional
Office

WIA Waiver Request

Statutory/Regulatory Provision:		Threshold of Obligations and Reallocation Provisions						
Citation: Statute:		§128(c) & 133(c)		Citation: Regulation:		20 CFR 663.160(b)		
Entity:	WORKFORCE West Virginia							
Contact:	Ronald Radcliff		Phone:	304-558-7024	Fax:	304-558-9157		
Address:	112 California Avenue		City:	Charleston	State:	WV	Zip:	25305
Duration:	From:	July 1, 2009		To:	June 30, 2010			
Governor:	Joe Manchin III							

Justification (Narrative 1)

West Virginia requests a waiver to allow a substitution for the current 80 percent threshold of obligations as the basis for re-obligation with an 70 percent requirement of accrued expenditures of all relevant funds available in a program year at the state to LWIB level. The relevant funds to this waiver are WIA (Adult, Dislocated Worker and Youth).

This request also asks for a waiver of the reallocation provisions at WIA sections 128(c)(2) and 133(c), and 20 CFR 667.160 to provide states with additional flexibility in the targeting of WIA funds. Under this waiver, states will be permitted to implement the following features:

- 1) recapture of funds from LWIBs that have not expended at least 70 percent of their funds in the first year;
- 2) use of recaptured funds for statewide activities as specified in the state plan or reallocation to other eligible LWIBs;
- 3) use of additional factors in determining LWIB eligibility for a reallocation of recaptured funds, including demonstrated need and ability to use additional funds.

Local Workforce Investment Boards prefer not to expend all funds to remain flexible enough to meet unanticipated needs, with the understanding that all LWIBs must make commitments for payments in future years. Obligations are often effective management tools for determining the commitment of funds, but accrued expenditures are the common language of fiscal reporting requirements and present a much more accurate and consistent financial picture. Local areas that meet the required 70 percent accrued expenditure rate will be able to apply to the state for any recaptured funds.

Outcomes/Benefit (Narrative 2)Goals to be Achieved by the Waiver:

The impact of this waiver at the local level will be reflected in the State's overall expenditure level, especially given the continued nationwide concern expressed about the expenditure rates for WIA funds. By having the option to recapture local funds at the end of first year, the State will be in a better position to have resources available to respond to national directions, priorities, and challenges at the state level and also advance implementation of the Workforce Investment Plan. The State will also be better positioned to provide increased linkages with economic development initiatives and may be able to provide localized assistance in service provisions where a local area is currently underserved.

Description of the Individuals Impacted by the Waiver:

Local areas with a documented need for and ability to spend additional funds for services will benefit and statewide activities to implement actions identified in this plan will also benefit.

Monitoring/Evaluation Process (Narrative 3)Description of the Process to Monitor Progress:

The State will use financial expenditures reports from local areas to monitor the impact of the implementation of this waiver. In addition, the State will also analyze these reports to determine how much funding will be used by West Virginia to support identified Federal and State initiatives and to reallocate to other local areas who have met the expenditures requirements of WIA.

Other Comments Provided (Narrative 4)

West Virginia will make the public aware of this waiver request through its WorkForce West Virginia website, workforcewv.org. A public comment period was provided from April 23, 2009, to May 7, 2009.

WIA Waiver Request

Statutory/Regulatory Provision:		On-The-Job-Training Reimbursement					
Citation: Statute:	§101(31)(B)	Citation: Regulation:	20 CFR 663.710(b)				
Entity:	WORKFORCE West Virginia						
Contact:	Ronald Radcliff	Phone:	304-558-7024	Fax:	304-558-9157		
Address:	112 California Avenue	City:	Charleston	State:	WV	Zip:	25305
Duration:	From:	July 1, 2009		To:	June 30, 2010		
Governor:	Joe Manchin III						

Justification (Narrative 1)

West Virginia requests a waiver to allow a change to the maximum employer reimbursement for on-the-job (OJT) training from the current 50 percent of the wage rate. The waiver request seeks to allow West Virginia to reimburse the employer on a graduated scale based on the size of the business. Under the waiver, the following reimbursement amounts will be permitted: 1) up to 90 percent for employers with 50 or fewer employees, and 2) up to 75 percent for employers with more than 50 but fewer than 100 employees. For employers with 100 or more employees, the current statutory requirements will continue to apply. The statutory maximum reimbursement has been determined to be a deterrent for small employers in West Virginia that had considered OJT as a means to develop workforce skills necessary for growth in their respective industries. A graduated scale of reimbursement will create more incentive for small employers to participate in OJT that achieves high-skill, high demand and/or high wage attainment and family sustaining jobs.

As required by 20 CFR 663.700, the length of an OJT will still be determined by the skill requirements of the occupation, the academic and occupational skill level of the participant, prior work experience, and the participant's individual employment plan. No reimbursement greater than 50 percent will remain in effect longer than three months.

Approval of this waiver will be especially beneficial to small businesses that provide most of the new jobs being created in our state. Recent statistical analysis revealed that more than 8,000 new jobs were created by 3,450 new West Virginia small businesses (those employing fewer than 50 workers) in the last year. In West Virginia, 97% of businesses are Small Businesses, meaning they employ fewer than 50 workers.

Outcomes/Benefit (Narrative 2)**Goals to be achieved by the Waiver:**

- Increased percentages of employers using OJT as a means of hiring and retaining a skilled workforce
- Increased number and percentages of workers trained and hired through OJT programs
- Elevated skill proficiencies for workers that will result in increased worker viability
- Increased responsiveness to labor market issues in the private sector
- Increased flexibility at the local level to offer business training solutions tailored to respond to the specific needs of the business

Description of the Individuals Impacted by the Waiver:

Employers will benefit from this waiver allowing OJT at a reduced cost. It will allow business to more rapidly adapt to changes in technology and the marketplace. Businesses will be capable of expanding and remaining competitive in technology and the marketplace. Businesses will be capable of expanding and remaining competitive with affordable OJT options uniquely designed to achieve their specific developmental goals. This waiver will make OJT a much more viable option, especially for small businesses looking to get started or expanded.

The waiver will also benefit Adults, Dislocated Workers and Out-of-School Youth who are eligible for services under WIA by the availability of OJT options.

Monitoring/Evaluation Process (Narrative 3)**Description of the Process to Monitor Progress:**

WORKFORCE West Virginia is the state administrative entity for the Workforce Investment Act. West Virginia's workforce development goals are designed to achieve an industry-led, demand-driven system and a highly skilled workforce. With emphasis on furthering customer satisfaction through choice, individual opportunity, and continuity of services, each LWIB can ensure an efficient and quality delivery system. WORKFORCE West Virginia will monitor the implementation and impact of the waiver, through a combination of reporting from the local level, state oversight, and evaluation. Performance measures from the Local Workforce Investment Areas will be regularly evaluated to determine the impact of the waiver approval. The state will gather information through discussion on the progress of the implementation of the waiver, performance data, and obstacles encountered, if any. To ensure fiscal integrity, there will be both adequate oversight and complete, consistent reporting. The state will review applicable policies and procedures and modify accordingly.

Other Comments Provided (Narrative 4)

West Virginia will make the public aware of this waiver request through its WorkForce West Virginia website, workforcewv.org. A public comment period was provided from April 23, 2009, to May 7, 2009.

WV - Waiver updates

Statutory/Regulatory Provision:		Transfer Up to 50 Per cent of Title I Adult and Dislocated Worker Funds					
Citation: Statute:		§133(b)(4);		Citation: Regulation:		20 CFR 667.140	
Entity:		WorkForce West Virginia					
Contact:		Russell L. Fry		Phone:		304-558-7024	
				Fax:		304-558-9157	
Address:		112 California Avenue		City:		Charleston	
				State:		WV	
				Zip:		25105	
Duration:		From:		July 1, 2009		To:	
						June 30, 2010	
Governor:		Joseph Manchin III					

Justification (Narrative 1)

West Virginia requests a waiver of the statutory 20% limitation on transferring local WIA funds between the Adult and Dislocated Worker programs so the fifty (50) per cent of Title I Adult and Dislocated Worker funds are available depending on which population has the greatest service needed as determined locally. West Virginia issued a Policy No. 27-03 on March 1, 2003 to allow LWIBs to request up to fifty per cent (50%) of a program year formula allocation either from the adult to dislocated worker funding or from the dislocated worker to the adult funding stream.

This waiver will increase the flexibility to serve West Virginia's adult population with formula funds. Program needs change quickly at the local level. Each of West Virginia's seven (7) local areas serves diverse groups of job seeker and businesses. Local Workforce Investment Boards needs the flexibility to transfer funds to deliver intensive and training services to their participants. Services can be directed to the unemployed and under-employed participants who may need intensive services and/or training services in order to obtain or retain employment that allows for self-sufficiency. The economic climate in the various regions vary greatly even under the best circumstances and given the current economic crisis, changes in regional economies can often place increased demands on dislocated worker funds, and likewise, continued reductions in adult program funding can limit some areas in serving those hard-to-serve adults most in need.

Local Workforce Investment Boards prefer the flexibility to move their adult and dislocated worker funds in order to use funding to its fullest potential. This will allow the LWIBs to remain flexible enough to meet unanticipated needs of their customers as it related to the current economy. Obligations are often effective management tools for determining the commitment of funds, but accrued expenditures are the common language of fiscal reporting requirements and present a much more accurate and consistent financial picture.

Outcomes/Benefit (Narrative 2)

Goals to be Achieved by the Waiver:

The impact of this waiver at the local level will be reflected in the State's overall expenditure level, especially given the continued nationwide concern expressed about the expenditure rates for WIA funds. Low income individuals seeking entry into the workforce as well as unemployed individuals seeking workforce re-entry will be positively impacted by the waiver as local boards can respond to the service needs in the area that may differ throughout the course of the year and may not always align with the circumstances that existed when adult and dislocated worker formula calculations were determined. By having the option to transfer up to fifty per cent of adult and dislocated worker funds, the LWIBs can meet the demand of their customers. This will better position the LWIBs to have resources available to respond to national directions, priorities, and challenges within their region and also advance implementation of the Workforce Investment Plan.

Description of the Individuals Impacted by the Waiver:

Local areas with a documented need for and ability to transfer funds for services that will benefit the needs of West Virginians statewide. Local areas will be able to submit a written request to transfer funds between the adult and dislocated worker programs throughout the program year, and can be made at any time during the life of the funds.

Monitoring/Evaluation Process (Narrative 3)

Description of the Process to Monitor Progress:

WORKFORCE West Virginia is the state administrative entity for the Workforce Investment Act. West Virginia's workforce development goals are designed to achieve an industry-led, demand-driven system and a highly skilled workforce. With emphasis on furthering customer satisfaction through choice, individual opportunity, and continuity of services, each LWIB can ensure an efficient and quality delivery system. WorkForce West Virginia will monitor the implementation and impact of the waiver, through a combination of reporting from the local level, state oversight, and evaluation. Performance measures from the Local Workforce Investment Areas will be regularly evaluated to determine the impact of the waiver approval. The State will gather information through discussion on the progress of the implementation of the waiver, performance data, and obstacles encountered, if any. To ensure fiscal integrity, there will be both adequate oversight and complete, consistent reporting.

Other Comments Provided (Narrative 4)

Consistent with the general waiver request, the state is adhering to publication requirements to ensure the broadest participation possible, including informing appropriate partners and interested parties, such as labor, community based organizations, LWIBs and the West Virginia Workforce Investment Council. A public comment period was provided from July 30, 2009 through August 13, 2009.

WIA Waiver Request

Statutory/Regulatory Provision:		Replace the required 50 percent customized training employer match with a match using a sliding scale from 10 percent to 50 percent (amount determined by established criteria)					
Citation: Statute:	§101(31)(B)	Citation: Regulation:	20 CFR 663.710(b)				
Entity:	WORKFORCE West Virginia						
Contact:	Ronald Radcliff	Phone:	304-558-7024	Fax:	304-558-9157		
Address:	112 California Avenue	City:	Charleston	State:	WV	Zip: 25305	
Duration:	From: July 1, 2009	To:	June 30, 2010				
Governor:	Joe Manchin III						

Justification (Narrative 1)

West Virginia requests a waiver of the statutory exclusion and regulatory prohibition of the customized training required minimum employer payment of 50 percent of the cost of training. The statutory minimum required payment has been determined to be the single greatest deterrent for employers in the State who had considered customized training as a means to access or develop workforce skills necessary for growth in their respective industries. A sliding scale for the employer matching cost component will create more incentive for employers to participate in customized training that achieves high-skill, high-demand and/or high wage attainment.

The proposed scale will range from 10 to 50 percent, based on characteristics such as: the type of training, size of the business, number of persons being trained, the hiring needs of the employer, and industry or skill demanded. Characteristics measurement will be based on alignment with the State's workforce development goals, delineated in West Virginia's Strategic State Workforce Investment Plan, which focuses on training and programs that achieve high-skill, high-demand and/or high-wage attainment.

There are no state or local statutory or regulatory barriers to impede implementation of the requested waiver.

Outcomes/Benefit (Narrative 2)**Goals to be achieved by the Waiver:**

- Increased flexibility at the local level to offer business training solutions tailored to respond to the specific needs of business
- Elevated skill proficiencies for workers that will result in increased worker viability
- Increased responsiveness to labor market issues in the private sector
- Increased capability to attract new businesses into the State
- Increased percentages of employers using customized training as a means of hiring and retaining a skilled workforce
- Increased percentages of workers trained and hired through customized training programs

Description of the Individuals Impacted by the Waiver:

Employers will benefit from this waiver allowing customized training at a reduced cost. It will allow businesses to more readily adapt to changes in technology and the marketplace. Businesses will be capable of expanding or remaining competitive with affordable, customized training options, uniquely designed to achieve their specific developmental goals.

The waiver will also benefit Adults, Out-of-School Youth and Dislocated Workers who are eligible for services under WIA by the availability of customized training options. The eligible individuals who are most likely to benefit are those who have multiple barriers to employment, low basic skills or limited English language proficiency.

Trade-impacted workers would benefit by increased opportunities to gain relevant, transferable, and demanded skill proficiencies that will allow them to transition into other industries or occupations.

Monitoring/Evaluation Process (Narrative 3)**Description of the Process to Monitor Progress:**

WORKFORCE West Virginia is the state administrative entity for the Workforce Investment Act. The flexibility of this waiver enables West Virginia to design a seamless delivery of services and to customize the education and training programs for job seekers. West Virginia's workforce development goals are designed to achieve an industry-led, demand-driven system and a highly-skilled workforce with emphasis on furthering customer satisfaction through choice, individual opportunity, and continuity of services. By following the guidelines, each LWIB can ensure an efficient and quality delivery system. WORKFORCE West Virginia will monitor the implementation and impact of the waiver through a combination of local level reporting, state oversight, and evaluation. Performance measures from the Local Workforce Investment Areas will be regularly evaluated to determine the impact of the waiver approval. The state will gather information through discussion on the progress of the implementation of the waiver, performance data, and obstacles encountered, if any. To ensure fiscal integrity, there will be both adequate oversight and complete, consistent reporting. The State will review applicable policies and procedures and modify them accordingly.

Other Comments Provided (Narrative 4)

West Virginia will make the public aware of this waiver request through its WorkForce West Virginia website, workforcewv.org. A public comment period was provided from April 23, 2009, to May 7, 2009.