

NOV 10 403



The Honorable Timothy M. Kaine
Governor of Virginia
Patrick Henry Building
1111 East Broad Street, 3rd Floor
Richmond, Virginia 23219

Dear Governor Kaine:

As part of Virginia's modification to the State Plan for Title I of the Workforce Investment Act (WIA) and the Wagner-Peyser Act, the Commonwealth 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 Virginia approval of the following waiver 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.

The approval for this waiver remains in effect. The letter dated June 15, 2009 granted temporary extensions of the remainder of Virginia's waiver requests. The previous approval of the extensions is hereby terminated and replaced by decisions set forth in this letter. Unless otherwise indicated, all waiver approvals that follow apply to both WIA formula funds and funds made available under the American Recovery and Reinvestment Act of 2009 (ARRA).

Requested Waivers

Requested Waiver: Waiver of the provision at 20 CFR 663.530 that prescribes a time limit on the period of initial eligibility for training providers.

The Commonwealth is requesting a waiver of the time limit on the period of initial eligibility of training providers provided at 20 CFR 663.530. Virginia is granted this waiver through June 30, 2010. Under the waiver, the Commonwealth is allowed to postpone the determination of subsequent eligibility of training providers. The waiver

also allows Virginia to provide an opportunity for training providers to re-enroll and be considered enrolled as initially eligible providers.

Requested Waiver: Waiver to permit the State to replace the performance measures at WIA Section 136(b) with the common measures.

The Commonwealth is requesting a waiver that allows the State to replace the 17 performance measures under WIA Section 136(b) with the common measures. Virginia is granted this waiver through June 30, 2010.

This waiver permits the Commonwealth to report WIA outcomes against the common performance measures only, rather than the performance measures described at WIA Section 136(b). Virginia will no longer report to ETA on the following WIA measures: WIA adult and dislocated worker credential rates; participant and employer customer satisfaction; older youth measures; and younger youth measures. The Commonwealth will use the three adult common performance measures to negotiate goals and report outcomes for the WIA Adult and WIA Dislocated Worker programs. Virginia will use the three youth common performance measures to negotiate goals and report outcomes for the WIA Youth program. Workforce Investment Act Standardized Record Data system (WIASRD) item 619, Type of Recognized Credential, should be completed for each individual as appropriate, regardless of this waiver to report on common performance measure outcomes only.

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 Commonwealth 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. Virginia is granted this waiver through June 30, 2010. Under the waiver, transfer authority is 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 ARRA. However, the Commonwealth 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 WIA Section 134(a) to permit local areas to use a portion of local funds for incumbent worker training.

The Commonwealth is requesting a waiver to permit local area formula funding to be used for statewide activities, specifically incumbent worker training. Virginia is granted this waiver through June 30, 2010. Under this waiver, the State will be permitted to use up to 20 percent of local Dislocated Worker funds for incumbent worker training only as part of a lay-off aversion strategy. ETA believes limiting incumbent worker training to the specified level and requiring it to be a part of layoff aversion is the best use of funds in the current economic climate where serving unemployed workers is a paramount responsibility of the workforce system. All training delivered under this waiver is restricted to skill attainment activities. Local areas must continue to conduct the required local employment and training activities at WIA section 134(d), and the Commonwealth is required to report performance outcomes for any individual served under this waiver in the WIASRD.

Requested Waiver: Waiver of WIA Section 134(a)(1)(A) to permit a portion of the funds reserved for rapid response activities to be used for incumbent worker training and other statewide activities.

The Commonwealth is requesting a waiver to permit use of rapid response funds for incumbent worker training and other statewide activities. Virginia is granted this waiver through June 30, 2010. Under this waiver, the Commonwealth is permitted to use up to 20 percent of rapid response funds for incumbent worker training only as part of a lay-off aversion strategy and the following statewide activities that enhance services to dislocated workers and outlined in the waiver request: activities to assist local workforce areas in the provision of employment and training services, specifically core, intensive or training services otherwise allowable under formula funds or employer services allowable under WIA. The purpose of this waiver is to enhance services to dislocated workers, and so must not be used as a means to deliver WIA services to individuals who would not otherwise be served under a WIA program. Virginia is required to report performance outcomes for any participant, including incumbent workers, served under this waiver in the WIASRD. ETA Training and Employment Guidance Letter No. 14-08, Section 19, issued on March 18, 2009, explained that in order to apply this waiver to funds made available through ARRA, states needed to submit a detailed justification. Because record numbers of unemployed individuals continue to seek the services of the workforce system, ETA believes that the use of ARRA funds for incumbent worker training would be inappropriate, and these funds should be devoted to serving those participants without jobs. Therefore, this waiver does not apply to funds made available through ARRA.

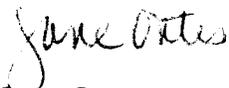
Requested Waiver: Waiver of the reallocation provisions at WIA Sections 128(c)(2) and 133(c)(2), and 20 CFR 667.160.

The Commonwealth previously was granted a waiver of reallocation provisions at WIA Sections 128(c)(2) and 133(c)(2), and 20 CFR 667.160. Virginia has withdrawn its request to extend this waiver. The waiver approval period has lapsed, and expires as of the date of this letter.

The approved waivers are 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 Commonwealth should address the impact these waivers have had on the State's performance in the WIA annual performance report, due October 1 of each year.

We look forward to continuing our partnership with you and achieving better workforce outcomes. If you have any questions, 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: Jeffrey Gabriel, Federal Project Officer for Virginia, ETA Philadelphia Regional Office

Commonwealth of Virginia
Workforce Investment Act (WIA) Waiver Plan
Submitted with June 2009 State Plan Modification

Red text on page 8 (Waiver 5) reflects clarification added August 6, 2009 per DOL request

In accordance with the provisions at Section 189 of the WIA and with the Department of Labor Employment and Training Administration (ETA) Training and Employment Guidance Letter (TEGL) #14-08, Virginia is submitting this waiver request as part of our WIA and Wagner-Peyser State Plan Modification.

The waiver requests are presented in two categories: (1) existing waivers the Commonwealth would like to retain moving forward and (2) new waivers the Commonwealth is seeking. For each, there is also a notation indicating the Commonwealth's request for each waiver's applicability to formula WIA funds, American Recovery and Reinvestment Act (ARRA) WIA funds or both.

Public Input and Comment:

All waiver requests included in this package were posted to the internet for public review and comment. In addition, local workforce investment boards were invited to provide input into the process as part of the development of the waivers. The Virginia Workforce Council, which serves as the State's Workforce Investment Board, was also given the opportunity to review and discuss the waivers as part of a public meeting on June 10, 2009, which also provided an additional opportunity for public input and comment.

Actions Taken by State to Remove State or Local Barriers:

For all waiver requests in this package, there are no known state or local barriers to implementation.

Part 1 - Requests for Existing Waivers to be Continued:

1. Waiver of WIA Regulation 29 CFR 664.510, to allow older and out of school youth to use Individual Training Accounts.

Requested Applicability: Formula and ARRA Youth funds

TEGL 14-08 indicates that states already having this waiver are not required to submit a full waiver plan as it has become a fundamental aspect in the operation of the workforce system.

2. Waiver to allow local workforce boards the ability to transfer up to 50% of funds between the adult and dislocated worker program streams.

Requested Applicability: Formula funds

Statutory/ Administrative Requirements to be waived

WIA Section 133(b)(4) and 20 CFR 667.140, *Funds Transfer Authority*

Virginia requests a waiver of the statutory 20 % limitation on transferring local WIA funds between the Adult and Dislocated Worker programs so that 50% of such funding is available depending on which population has the greatest service needed as determined locally.

Goals of the waiver and expected outcomes

WIA funding streams can have the affect of creating “stovepipes” within the same program by establishing two sets of eligibility requirements for individuals within the same population cohort. This waiver will allow local boards with flexibility in ensuring that appropriate service mixes can be provided based upon “real time” local need and demand, rather than limiting local areas in who they can serve based on historical poverty and unemployment factors that determined adult and dislocated worker funding availability. Program needs change quickly at the local level. Each of Virginia’s 15 local areas serves diverse groups of job seekers and businesses; from urban, suburban to rural perspectives. The economic climate of the various regions are vastly different even under the best of 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 adults most in need. This waiver “levels” the field and allows local boards to design innovative programs and be responsive in a demand-driven environment.

Individuals impacted by the waiver

Low income individuals seeking entry into the work world 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 o a year and may not always align with the circumstances that existed when adult and dislocated worker formula calculations were determined.

Process to use in monitoring progress in implementing the waiver

A Field Guidance Memorandum will identify the administrative procedures to be followed by local areas in making a funds transfer request.

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. (However, requests will not be accepted between June 15 and 30 of each year due to closeout processes). Transfer requests that would result in more than 50% of the remaining fund balance at the time of the request for either program must include a description of the expected impact to the program that funds are

being moved from and and/or include documentation that the decision was made at a meeting of the Local Workforce Investment Board (WIB) or one of its committees. This will indicate that the WIB has weighed the pros and cons of program impacts that may result from such a transfer. WIBs must submit their written request to transfer funds to the State WIA office at the Virginia Community College System (VCCS) for administrative review and approval on behalf of the Governor for purposes of the WIA (CFR 667.140 (b)). State WIA Finance staff will verify that the funds transfer request does not exceed the funding availability per program year allocation. WIBs receiving an approved funds transfer will receive a revised Notice of Obligation (NOO) from VCCS. A copy of the revised NOO will be provided to the state WIA program staff for monitoring purposes.

3. Waiver to allow local workforce boards the ability to use of to 20% of dislocated worker funds for incumbent worker training

Requested Applicability: Formula and ARRA funds

Statutory/ Administrative Requirements to be waived

WIA Section 134(a)(1)(B) and 20 CFR 665.200-220, *Use of local funds for certain Statewide Activities for Dislocated Workers*

Virginia requests a waiver to allow local boards, upon request and approval by the Commonwealth, to designate up to 20% of their local dislocated worker allocation as local activity funds for the purposes of providing an incumbent worker training program (IWT). This waiver would remove the current provision which only allows statewide funds to be used for this activity.

Goals of the waiver and expected outcomes

The local activity fund designation would allow local boards to implement innovative incumbent worker training programs consistent with how the State is able to conduct such activities under Section 134 of the WIA and 665.200-220 of the Final Regulations.

The goal of this waiver originally approved by DOL in 2005 was to allow local boards some flexibility if determined necessary to be more responsive to the needs of the employer community while also allowing employed individuals who may not meet WIA income eligibility requirements to upgrade their skills. While the State has historically funded incumbent worker training activities from the statewide funds, such activities remains a popular choice for the employer community, with the current need outpacing the amount of state funding available for such use. This waiver has the added benefit of allowing local boards the ability to strengthening their linkages with the economic development and employer communities.

While the Commonwealth still believes that long-term, this basis for the waiver alone is sound, the waiver also has value during the current economic crisis for the following reason:

- There may be instances where employers need to retrain workers to adapt to new technologies or practices to remain competitive and avoid lay-off or closure situations. Existing employees likely will be earning more than individuals in the employed adult category that WIBs can typically work with under standard eligibility guidelines. The benefits to the individuals, employers and the state and local area will be better served if such individuals can be assisted while employed rather than them becoming unemployed.

Additional expected outcomes of the waiver are that local boards can become more known and relevant to the employer and economic development community, more individuals can be exposed to the one stop system where they might not otherwise utilize its services and local boards are afforded service design flexibility.

Individuals impacted by the waiver

The waiver benefits entire communities within the Commonwealth by allowing local areas to quickly adapt to economic conditions. Businesses can remain open and competitive and keep their workers employed. Such assistance at the “front end” will be less costly over time than the impacts of a business shutting down and dislocating employees. It also aligns with the Governor’s economic development goals of retaining and assisting existing employers or new employers that have specialized training needs in order to remain competitive in a global and ever-changing economy. This waiver would encourage boards to partner with more employers and labor and community organizations to promote universal access for more individuals.

Process to use in monitoring progress in implementing the waiver

Virginia has operated under a waiver approval for local boards to use up to 25% of their local adult and dislocated worker funds for incumbent worker strategies since 2005 and amended our Incumbent and Employed Adult policy provisions as a result of the original waiver, <http://www.vccs.edu/Portals/0/ContentAreas/Workforce/VWN/Policy02-04.pdf>. In requesting a local fund designation for incumbent worker training, the local board has been required to submit a local plan waiver to the State. The plan amendment must identify the exact percentage to be set aside, and describe the services and activities to be funded, a target number of employers and/or employees that will benefit from the funds, how the service aligns with the local plan’s strategic goals and assurance that the training is for high demand or high growth occupations. This requirement would continue should the waiver be approved, with modifications to incorporate the new direction established by the DOL relative to layoff aversion strategies.

In order to reflect the current economic situation and the increased demand for dislocated worker funds at this time, the Commonwealth, as directed by the United States

Department of Labor, must focus incumbent worker training only on Layoff Aversion strategies. Virginia is comprised of 15 diverse regional workforce areas, each with unique economic compositions and industry bases. Use of labor market data alone cannot accurately predict where the demand for layoff aversions may be needed. (By this we mean that identifying target industries and sectors alone cannot be viable; if a company presents a compelling and valid need and that company is not part of a “targeted” industry or sector, the local area should still have the ability to meet this “real time” demand. For this reason, rather the attempting to predict where incumbent worker strategies may be needed, Virginia will establish a two-tiered process for local areas who wish to continue or establish incumbent worker training efforts:

(1) A layoff aversion plan must be submitted and approved by the state. Such a plan will be considered an amendment to the local area’s overall strategic plan and must address the following:

- The local area’s overall layoff aversion strategy and approach, with appropriate linkages to the state strategy, and discussion of how IWT fits into that approach.
- The local economic landscape and the main reasons employers need IWT to avoid layoffs.
- The target industries and economic sectors.
- How the WIB (and its one stops and service providers) will work with the regional employer community to establish regular means of contact (outreach, on-site meeting rotation, establishing “roundtables”, working through existing VEC Employer Advisory Committees, chambers, etc).and identify (surveys or other means) the likelihood or instances when layoff aversion, to include incumbent worker training will be needed and/or helpful.

(2) Following a layoff aversion plan approval by the State, local areas will be able to advance to a more contemporary “real time” process where local areas can receive applications submitted by employers who make the case at the time funds are needed, provided that the local area has an initial plan approval from the state in place.

Once a local plan amendment is approved by the state, before an activity can be funded, the following detail must be provided to the WIB in the form of an application specific to the project:

- The type of training to be delivered, and the skills that will result.
- Other One Stop Career Center services offered to employees.
- Other services offered for employees and the employer, including services leveraged from workforce system partners.
- How employers were selected, i.e. announced layoffs through a WARN, other public notice, or other means; reduced employee hours; or another indicator of economic difficulty that could be addressed through IWT.
- A determination that IWT is the appropriate solution for an individual employer, and that the training will provide the employer with the skills it needs to maintain operations and avoid closure or lay-offs.

- Evidence of employer commitment, either to retain the employee, to pay the employee a higher wage, or otherwise benefit the employee.

For all approved incumbent worker projects:

- The funds will be tracked by funding stream.
- Performance outcomes for incumbent workers served under this waiver will be reported in the WI Standardized Record Date (WIASRD) or any subsequent DOI data system.

These plan amendments allow the state to review and evaluate the impacts of the waiver.

In combination with Waiver #2 above, the funding flexibility afforded to local boards should provide for adjustments to ensure that expanded populations benefit from WIA and other partner services. Annual review of funding and populations served may result in the State adjusting local activity funding percentages, though this has not been determined necessary to date.

4. Waiver to allow the State the option of recapturing funds from local areas that have not expended at least 80% of their local funds in the first year to be used for statewide use or reallocated to other eligible local areas, wherein currently recaptured funds from the first year may only be reallocated to other local eligible areas.

Requested Applicability: Formula funds

Statutory/ Administrative Requirements to be waived

WIA Sections 128(c) and 133(c), and 20 CFR Part 667.160

Goals of the waiver and expected outcomes

This waiver was originally granted in 2005 and while the Commonwealth has not enacted policy to date on this ability to recapture funds based upon local expenditure rates, we do wish to maintain this flexibility under our existing waiver approval, especially given the continued nationwide concern expressed about the expenditure rates for WIA funds that most recently resulted in rescission of funds by Congress. By having the option to recapture local funds at the end of the 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 Governor's Workforce Development Strategic Plan. The State will also be better positioned to provide increased linkages with educational and supportive service resources and may be able to provide localized assistance in such provisions and others where a local area is overwhelmed. This could be particularly important during the current economic climate because while all areas of the state are experiencing downturns, certain areas are experiencing a disproportionate share of layoffs, closings or high levels of poverty and may not have the capacity to meet demands without assistance from the state. The state would also be positioned with such

a waiver to be able to react to any federal initiatives or emergency actions with the ability to recapture funds for uses other than reallocating to local areas.

Individuals impacted by the waiver

Virginians in general would yield positive impacts from this waiver through the range and types of services described above that could be provided with the additional funding flexibility. The Commonwealth would review the circumstances of any recapture prior to doing so, and as part of that review, ensure that no individual already receiving local WIA assistance would be negatively impacted.

Process to use in monitoring progress in implementing the waiver

Fiscal information and local expenditure rate reports will allow the state to monitor the affects of any policy implemented under this waiver, and also determine how much funding can be expended by the State for uses determined by the Governor to support identified Federal and State initiatives and how much can be reallocated to other local areas who have met the expenditure requirements of WIA.

5. Waiver to allow for up to 50 percent of state set-aside rapid response funds to be used for allowable state activities under WIA Sec. 133 (a)(2)

Requested Applicability: ARRA and Formula funds

Statutory/ Administrative Requirements to be waived

20 CFR 665.320(d)(2)

Goals of the waiver and expected outcomes

The state originally received this waiver authority as a result of the mass layoffs as a result of the Ford plant closure in Norfolk and the impacts to Ford's related suppliers, as well as mass layoffs at the Volvo Trucks plant in Dublin.

During the current economic crisis, the flexibility for the state to have additional funding sources available to ensure that actual services can be provided as necessary (as opposed to just traditional rapid response activities that are not service-oriented) can help Virginia ensure that demands can be met. The funds would be used only for program purposes allowable under section 134 (a), not administration as indicated in Section 134(a)(3)(A)(i.) and (B). This transfer authority would be analogous at the state level to the authority of local areas to transfer funds among adult and dislocated worker funding streams.

Examples of activities funded in the past under this waiver include: regional coordination to ensure workforce and training needs of two major IT firm locating in Southwest Virginia were met, innovative program of assessment, skills, training and supportive

services for a major military spouses project at Fort Lee, a pilot for serving disabled veterans, and enhancements to the Career Readiness Certificate system support of a Governor's initiative known as the Commonwealth Scholars which brings business leaders into classrooms, where they work with educators to motivate students to complete a rigorous course of study in high school so that they are better prepared for postsecondary education or to enter the workforce; in addition to numerous grants to local workforce areas demonstrating a need for additional resources to meet needs of increased levels of dislocated workers in their communities.

Recognizing the concerns articulated by the Department of Labor on the use of rapid response funds for their strict statutory purpose during the current economic crisis, the Commonwealth does respectfully note that in these times of increased demand for services, the current limitations on use of rapid response for actual service delivery interventions is precisely why we are seeking the continued approval of this waiver – in order to have expanded resource capability to meet needs. We do not see this waiver as contrary to the concerns of the DOL.

In the interest of “narrowing the field” of possible uses, Virginia would focus funding used under this waiver approval on the following allowable statewide activities:

- 1) Pilots and demonstrations that advance on of the three goals of the Governor's Workforce Development Strategic Plan.
- 2) Incumbent Worker Training (IWT) that is part of a concerted layoff aversion strategy. (discussed in more detail below)
- 3) Carrying out activities deemed necessary to assist local areas in the provision of employment and training services. Specifically, core, intensive or training services otherwise allowable under formula funds or employer services allowable under WIA.

IWT Discussion

Specific applications will be required before funds under item 2 of this waiver (IWT) are committed. Such applications must document the following:

- The type of training to be delivered, and the skills that will result
- Other One Stop Career Center services offered to employees.
- Other services offered for employees and the employer, including services leveraged from workforce system partners.
- A determination that IWT is the appropriate solution for an individual employer, and that the training will provide the employer with the skills it needs to maintain operations and avoid closure or lay-offs.
- Evidence of employer commitment, either to retain the employee, to pay the employee a higher wage, or otherwise benefit the employee.

The application process will be in tandem with the overall layoff aversion strategy as defined herein (this is an initial strategy framework that may be modified in the future)

based on additional research and best practices review, consultation with and technical assistance from the DOL etc.):

Layoff Aversion

Plant closings and mass layoffs can occur for a variety of reasons in periods of both economic expansion and decline. These may include financial difficulty, mergers and acquisitions, loss of markets, consolidations, foreign competition, product or service obsolescence, shift in parent company focus, or other factors. Corporate conglomerates frequently close or sell plants or facilities which may be profitable, but *not profitable enough*. They may sell or close operations which no longer meet their core business application or which are viewed as excess capacity to their overall operations.

When a closely held business is sold, a loss of jobs may occur if the new owner restructures the company. An owner's retirement can precipitate a business closing in the absence of a successorship plan.

Once a company announces its intentions to close or substantially downsize, the decision is usually final and irreversible. However, there are occasions when the decision can be changed. Over the past 25 years there have been hundreds of examples of companies that were scheduled to close, but were kept in operation because of a response initiated by one or more interest groups such as employees, management representatives, government and community groups, and labor organizations. These responses have included management or employee buyouts, sale to other parties, and business restructuring. It is important to be aware that there may be opportunities to save jobs and avoid resulting hardships imposed on individuals and communities when a plant or business closes.

Early response is critical. An important initial step in Rapid Response is to assess the reason for the plant closing or mass layoff. If there is an indication that the business closing or mass layoff might be averted, the Rapid Response Section can provide technical assistance to interested parties to investigate possible layoff aversion strategies. This can include undertaking a pre-feasibility study for a company or group, including the workers, to purchase the plant or company and continue operations. Layoff aversion initiatives are authorized and may be funded under the Workforce Investment Act.

Pre-feasibility Studies

A pre-feasibility study can assess whether it is possible to continue the business operation and under what conditions. It can provide objective evidence that there is no likelihood of the business reopening (or not closing). If the study proves negative, it can help to expedite the commitment of workers to seek new employment.

To be effective, a pre-feasibility study should be performed in a timely manner and completed within 30-45 days. The process should be sensitive to the needs and interests of workers and should involve both labor and management in a union shop.

Basic questions which should be answered in the pre-feasibility study include:

- Will a retraining of the workforce to a new skill set that allows the facility to remain or become more competitive make a difference in closing/layoff? (new product line possibilities, new manufacturing or management processes, etc).
- Are the present owners amenable to a buyout?
- Is the firm organized for a smooth transition?
- Are the products or services in a declining, stable, or growing market?
- Can the facility be an efficient producer in its industry?
- How does the facilities profitability compare to its competition?
- Has the physical plant been maintained in satisfactory condition?
- What is the potential for the plant to exist either as an independent firm or as a subcontractor?

The pre-feasibility study can assess basic elements of the business, including study methodology, organizational analysis, market analysis, operations/manufacturing analysis, financial analysis, legal analysis, and conclusions. It can examine the applicability of employee ownership and whether an Employee Stock Ownership Plan (ESOP) would be appropriate as an equity-sharing and tax-favored financing strategy.

Adequate Lead Time is Essential

For a layoff aversion effort to succeed; there must be sufficient time to organize an effective response. Generally, six months or more is needed to complete a business turnaround or buyout. Management and employees should be mobilized to pursue the effort. The firm must have a realistic potential to be viable, and key management and hourly personnel must be retained for the business to continue.

Awareness Efforts

The State's rapid response section will establish communication means through local chambers, business associations, employer advisory committees etc. to ensure that businesses are aware of employer and employee services available through the one stop system that may be able to help avert or delay layoffs and otherwise benefit the company and its employees from a workforce development and skills enhancement perspective. An additional benefit of this approach is that it will have the potential to capture all businesses regardless of size as many companies don't meet the thresh hold for WARN requirements.

As with all well-intentioned plans, the Commonwealth recognizes that labor market information and pre-determined strategies alone will not in all cases capture all of the need that may exist during the life of this plan. The application process will still allow the state to respond to real-time situations while the state continually evaluates its layoff aversion strategies and makes adjustments as necessary.

Data, Targeted Approach Areas and Statewide Response

The labor market information produced in the 2009 State Plan Modification (and contemporary updates as they become available) will be used as a baseline for layoff aversion efforts; however, it must again be noted that use of data alone cannot account for “real time” situations that may develop. The Commonwealth may develop targeted strategies for sectors such as automotive, real estate and mortgage, manufacturing/production, service, transportation and banking industries as a result of review of WARN activity. Partnerships with newly created positions at the Virginia Employment Commission through ARRA funds that they are receiving will be explored as a way of ensuring a statewide approach through their local office delivery system. Business and Economic Development Specialists (BEDS) will provide leadership, planning, and coordination of reemployment efforts. They will establish and maintain relationships with State-level business and economic development entities, such as Department for Business Assistance, Virginia Economic Development Partnership, State Chamber of Commerce, headquarter offices of workforce partners, and others to be determined based upon customer needs. They will also conduct research and provide information to Regional Business and Economic Development Specialists and local workforce center managers on growth business sectors and industries, and coordinate state-level marketing and public relations activities to support regional and local area efforts. State level staff will also work with these individuals to provide presentations to business organizations to encourage the use of the state workforce system for job posting.

Redirection

In instances where the layoff cannot be averted, early awareness can help strategies be established to more quickly retrain individuals in statewide demand occupations using current labor market information and other business/economic development-identified areas. Examples may include:

Home Care Aide, Personal Chef, Physical Therapy Aide, Certified Nursing Assistant, Medical Assisting, Viticulture, Paralegal, Help Desk Analyst: Tier 1, Graphic Design, AutoCAD, CISCO Certification, MS Office Certifications

For any approved incumbent worker projects developed under this waiver:

- The funds will be tracked by funding stream.
- Performance outcomes for incumbent workers served under this waiver will be reported in the WIA Standardized Record Date (WIASRD) or any subsequent DOL data system.

Individuals impacted by the waiver

Employers, job seekers and employed adults benefit from the ability to maximize training and other related services to meet skill and supportive needs. Other entities that can assist in the implementation of the Governor's Workforce Development Strategic Plan will also allow the entire system to benefit from various perspectives.

Process to use in monitoring progress in implementing the waivers

The Governor's Workforce Sub Cabinet, chaired by the Senior Advisor to the Governor for Workforce, consider requests for State level activities to be funded by discretionary WIA funds, and makes recommendations to the Governor. Funds made available under this waiver have been "added to this mix" and reviewed in the same manner. This practice would continue should the waiver be extended. There is a standardized application process which requires that projects to identify alignment with the one stop system, the Governor's Workforce Development Strategic Plan, the purposes of the WIA and other key elements such as performance outcomes and leveraged funding. This allows a uniform base to consider funding requests and ensures that investment of funds is sound. The Virginia Community College System, as WIA administrative and fiscal entity, executes grant agreements with recipients and establishes a reporting process to track and monitor progress. The VCCS also has fiscal controls in place to track available balances in order to provide advice on the use of rapid response funds for statewide activities.

Part 2 - Requests for Waivers New to the Commonwealth:

6. Waiver to permit implementation of and reporting only on the common program performance measures established in TEGL 17-05 in place of the 17 current statutory measures

Requested Applicability: Formula and ARRA funds

Statutory/ Administrative Requirements to be waived

WIA Sections 136(b)(2) and (c)(1); 20 CFR 666.100(a) and 666.300(a)

Goals of the waiver and expected outcomes

Virginia, like most other states, has experienced challenges in communicating to those outside the program administration arena what exactly the WIA does and the benefits it provides. Complexities such as the current 17 performance measures add further to the difficulties in relaying the story, particularly in quick "take away" opportunities with legislators, policy makers and others such as the business community that can help shape the workforce arena.

Moving to six streamlined reporting categories for WIA will help achieve a goal of the Governor's Workforce Development Strategic Plan which is to demonstrate results and

value in the workforce system that meets business needs through performance measurement and assessment. Other goals include of the waiver include:

- Simplification of case management through reduction of the number of different performance outcomes
- Removal of conflicting performance measures which may serve to confuse case managers and/or serve as disincentive to integrated case management
- Laying the foundation for greater emphasis on integrated system wide performance metrics.

The Governor's Workforce Plan as cited above and the Virginia Workforce Council both have endorsed 8 workforce system measures, but due to various policy and data sharing/technology infrastructure issues, they have yet to be implemented. The Performance and Accountability Committee of the Virginia Workforce Council has recommended that the WIA program move forward with implementing DOL's common measures and it is hoped that this can serve as in impetus for other DOL funded programs to consider such a move, with the longer-term goal that all workforce system programs in Virginia will eventually use Virginia's common system measures.

Individuals impacted by the waiver

Approval of this waiver should result in impacts that are seamless and invisible to the individuals that are served with WIA funds, and beneficial to the administrative structure that operates behind the scenes in terms of administering WIA programs. Policy makers will benefit from a more streamlined manner in which to receive performance information relative to the WIA program, and other partner programs may chose to benefit by considering a move to the common measures once the benefits to the WIA program from switching over are recognized.

Process to use in monitoring progress in implementing the waiver

A technical field guidance memorandum and technical assistance will be provided to the local workforce investment areas, patterned on the instruction and information provided in TEGL 17-05. The Virginia Workforce Connection, the virtual one stop system (VOS) in use in the Commonwealth will be modified to allow for the capturing and reporting of common performance measure outcomes to the DOL.

7. Waiver of the time limit on the period of initial eligibility for training providers, to acknowledge and address data collection barriers

Requested Applicability: Formula and ARRA funds

Statutory/ Administrative Requirements to be waived

WIA Section 122(c)(5) and 20 CFR Part 663.530

Goals of the waiver and expected outcomes

37 states have been granted a waiver under this category to date; more than any other waiver category approved by DOL. This suggests strongly that it has been difficult for states to implement the specific requirements of the WIA relative to reporting elements deemed necessary for a training provider to remain on the eligible training provider list after the initial term, and that the DOL has acknowledged this fact. Virginia seeks this waiver so that the initial term referenced in current law can be modified so that training providers can operate under an initial eligibility period until the WIA is reauthorized by Congress.

While Virginia has promulgated policy guidance to local areas on the elements for inclusion in determining subsequent eligibility for training providers based on the requirements at Section 122 (d) of the WIA training providers, collection of all required elements has been problematic and inconsistent over the years. Contributing factors to this fact include:

- Creation and maintenance of a data collection system around WIA requirements would be costly and burdensome, particularly with the volumes of individuals that some training providers serve.
- From the total class rolls, the relatively few numbers of WIA participants in comparison using Individual Training Accounts at institutions may not justify the resources necessary to develop and utilize reporting systems that WIA requirements create.
- There exists a potential to violate creating data privacy components of the Family Educational Rights Privacy (FERPA)
- WIA data requirements can have the effect of asking training entities and students to provide more information at a time when business are trying to streamline processes and be more customer friendly and the national direction is for the workforce development system to do the same.

With consistent and strict enforcement of all reporting requirements, Virginia, like most other states, runs the risk over time of losing training providers for the WIA system. This could be particularly devastating in the many rural areas of Virginia which are already challenged in the numbers and availability of training providers.

By allowing Virginia to reissue policy guidance to local workforce investments boards to focus only on collection of the information required for the initial eligibility period until Congress and the Department of Labor can address the challenges identified above at a national level (again, evidenced in the fact that 74% of state have this particular waiver),

we can convey our commitment to accountability while ensuring that we do not end up losing training providers at a time when they are most needed to meet the increasing number of youth, adults and dislocated workers we are being challenged to place into training.

The state policy guidance for initial eligibility will be modified to indicate that training providers must supply some form of performance outcomes to the local workforce board that placed them on the list annually that offer an indication of how the institution and programs rate in general terms of topics that may include credentials or certificates earned, employment placement, earnings and customer satisfaction through existing means or mechanisms as they have available.

Local areas would continue to have the ability to add additional reporting should they so desire. In all cases customer choice will continue to be main factor and sufficient information about training providers will continue to be available to the customers as they weigh the options with their case managers based upon choice and other factors.

Individuals impacted by the waiver

All customers will be positively impacted by this waiver. Individual customers will continue to have choice in selecting training providers, employers will benefit through a continued pipeline of skilled individuals and quality training providers will continue to serve current and new customers.

Process to use in monitoring progress in implementing the waiver

Virginia WIA Policy 00-7, "Certification Process for WIA Training Providers", will be modified to incorporate the elements outlined in this waiver request if approved. Annual program monitoring reviews of the local areas already conducted by the state will be modified and used to monitor on-going waiver implementation.