U.S. Department of Labor

Assistant Secretary for
Employment and Training
Washington, D.C. 20210

NOV 2 - 2009

The Honorable Charlie Crist
Governor of Florida
State Capitol
Tallahassee, Florida 32399

Dear Governor Crist:

As part of Florida'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 18, 2009, ETA granted Florida 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 18, 2009 granted temporary extensions of the remainder of Florida'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 to permit the State to replace the performance measures at WIA Section 136(b) with the common measures.

The State is requesting a waiver that allows the State to replace the 17 performance measures under WIA Section 136(b) with the common measures. The State is granted this waiver through June 30, 2010, effective July 1, 2009.

This waiver permits the State to report WIA outcomes against the common performance measures only, rather than the performance measures described at WIA Section 136(b). The State 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 State will use the three adult common performance measures to negotiate goals and report outcomes for the WIA Adult and WIA Dislocated Worker programs. The State 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 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 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 the ARRA. 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 required 50 percent employer contribution for customized training at WIA Section 101(8)(C).

The State is requesting a waiver of the required 50 percent employer contribution for customized training to permit the use of a sliding scale for the employer contribution based on the size of the business. The State is granted this waiver through June 30, 2010. Under the waiver, the following sliding scale is permitted: 1) no less than 10 percent match for employers with 50 or fewer employees, and 2) no less than 25 percent match for employers with 51-250 employees. For employers with more than 250 employees, the current statutory requirements (50 percent contribution) continue to apply. When determining the funding source for customized training, the State must use the appropriate program funds for the appropriate WIA-eligible population. The State may provide customized training to low-income adults with WIA Adult funds, and may provide customized training to dislocated workers with WIA Dislocated

Worker funds. Customized training provided with statewide funds must serve WIA eligible individuals.

Requested Waiver: Waiver of WIA Section 101(31)(B) to increase the employer reimbursement for on-the-job training.

The State is requesting a waiver to permit an increase in employer reimbursement for on-the-job training through a sliding scale based on the size of the business. The State is granted this waiver through June 30, 2010. 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 51-250 employees. For employers with more than 250 employees, the current statutory requirements (50 percent reimbursement) will continue to apply. When determining the funding source for on-the-job training, the State must use the appropriate program funds for the appropriate WIA-eligible population. The State may provide on-the-job training to low-income adults with WIA Adult funds, and may provide on-the-job training to dislocated workers with WIA Dislocated Worker funds. On-the-job training provided with statewide funds must serve WIA eligible individuals.

Requested Waiver: Waiver of WIA Section 134(a) to permit local areas to use a portion of local funds for incumbent worker training.

The State is requesting a waiver to permit local area formula funding to be used for statewide activities, specifically incumbent worker training. The State is granted this waiver through June 30, 2010. Under this waiver, the State will be permitted to use up to 10 percent of local Dislocated Worker funds and up to 10 percent of local Adult funds for incumbent worker training only as part of a lay-off aversion strategy. Use of Adult funds must be restricted to serving low-income adults under this waiver. 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 State 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 State is requesting a waiver to permit use of rapid response funds for incumbent worker training and other statewide activities. The State is partially granted this waiver

through June 30, 2010; incumbent worker training activities are approved and other activities are denied. Under this waiver, the state 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. All training delivered under this waiver is restricted to skill attainment activities. The State is required to report performance outcomes for incumbent workers served under this waiver in the WIASRD. As stated in TEGL No. 14-08, Section 19, this waiver does not apply to funds made available through ARRA.

ETA denies the State's request to use rapid response funds for other statewide activities. ETA believes that rapid response funds should only be used to enhance services provided to dislocated workers including placement in employment, training, or provision of supportive services. The State's request fell outside these parameters.

Requested Waiver: Waiver of 20 CFR 666 and 667.300(a) to reduce the collection of participant data for incumbent workers.

The State is requesting a waiver of the requirements to reduce the data collection burden for employers participating in WIA-funded incumbent worker training programs. The waiver permits the State to discontinue the collection of the following Workforce Investment Act Standardized Record Data (WIASRD) elements: single parent (117), unemployment compensation eligible status at participation (118), low income (119), TANF (120), other public assistance (121), homeless individual and/or runaway (125), and offender (126). The State is granted this waiver through June 30, 2010.

Requested Waiver: Waiver of WIA regulations 20 CFR 662.240(b)(10) to allow One-Stop Career Center staff to perform intake and eligibility determination for additional programs.

The State has requested an extension of the waiver of 20 CFR 662.240(b)(10). The waiver permits the State to include three supportive workforce programs cited by the State: Temporary Assistance for Needy Families (TANF), Food Stamp Employment and Training (FSET), and Medicaid programs in the list of services specified in 20 CFR 662.240(b)(10). Under the waiver, intake and eligibility determination for these programs are considered to be WIA core services and can be paid for with WIA funds. The State is granted an extension of this waiver through June 30, 2010.

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.

Requested Waiver: Waiver of WIA regulations at 20 CFR 666.300 to allow entrepreneurial training to be provided through state-level grants and local formula dollars with performance tracked and aggregated at the state level, but not included in local performance calculations.

The State has requested this waiver to spur more local engagement in entrepreneurial training. There is a higher standard for waiving the key WIA reform principle of increased accountability at 20 CFR 661.410(c), and we believe the collection of local performance information is essential for effective program management and performance accountability. ETA previously approved this request on a time-limited basis to support the development of workforce strategies that lead to self-employment. Since then, ETA has provided a considerable amount of flexibility in the use of funds to support self-employment options for WIA participants. We believe this flexibility offers ample incentive for local areas to invest in entrepreneurial training. Therefore, when considering the State's new request to continue to exclude local performance calculations, both the need for local performance information and the flexibility in the use of funds to support self-employment options support a denial of this waiver. Therefore, ETA denies this waiver. The waiver approval period has lapsed, and expires as of the date of this letter. Note that the State has the authority to report additional alternative performance measures that may reflect the outcomes of entrepreneurial trainees.

Requested Waiver: Waiver of WIA Section 181(e) to permit the use of WIA funds of up to $5,000 to capitalize a small business in concert with entrepreneurial or small business training.

The State is requesting an extension of the waiver of WIA Section 181(e) to permit the use of WIA funds of up to $5,000 to capitalize a small business in concert with entrepreneurial or small business training. ETA denies this waiver. Entrepreneurship is important to job creation, however business capitalization is best supported by organizations and agencies whose mission and statutory authority directly relate to business development.

Requested Waiver: Waiver of the Wagner-Peyser regulations that require labor exchange activities be delivered by State merit staff.

The State requests a waiver of the merit staffing requirements in Wagner-Peyser Act regulations. The requirement that Wagner-Peyser Act services be provided by state merit staff employees derives from Sections 3 and 5(b)(1) of the Wagner-Peyser Act and

the Secretary's interpretation of the applications of those sections. These sections are not covered by the WIA waiver authority; therefore, a waiver cannot be approved.

Requested Waiver: Waiver at WIA Section 195(10) and 20 CFR 667.264(a)(2) on the prohibition on the use of WIA funds for public service employment.

The State has requested a waiver of the provisions that prohibit the use of WIA funds for public service employment. This waiver is not approved. While ETA has at times provided this waiver in the case of severe natural disasters to aid in recovery efforts, ETA does not feel that it is an appropriate use of waiver authority to allow WIA funds to be used for public service employment outside of a disaster situation. Public service employment would constitute a dramatic shift from Congressional intention for the use of WIA funds.

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 State should address the impact these 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 Helen Parker, the Regional Administrator for Region III, at 404-302-5300 or Parker.Helen@dol.gov.

Sincerely,

Jane Oates

Jane Oates
Assistant Secretary

Enclosure

cc: Brad Sickles, Federal Project Officer for Florida, ETA Atlanta Regional Office