



NOV 10 2009

The Honorable Bill Richardson
Governor of New Mexico
State Capitol
Santa Fe, New Mexico 87501

Dear Governor Richardson:

As part of New Mexico'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 29, 2009, ETA granted New Mexico 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 to permit the State to replace the performance measures at WIA Section 136(b) with the common measures; and
- Waiver of the provision at 20 CFR 663.530 that prescribes a time limit on the period of initial eligibility for training providers.

The approvals for these waivers remain in effect. The letter dated June 29, 2009 granted temporary extensions of the remainder of New Mexico'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 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 20 percent of local Dislocated Worker funds for incumbent worker training only as part of a layoff 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 State is required to report performance outcomes for any individual served under this waiver in the Workforce Investment Act Standardized Record Data system (WIASRD).

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.

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 of these waivers 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 Joseph Juarez, the Regional Administrator for Region IV, at 972-850-4600 or Juarez.Joseph@dol.gov.

Sincerely,


Jane Oates
Assistant Secretary

Enclosure

cc: Roseana Smith, Federal Project Officer for New Mexico, ETA Dallas Regional Office
Joseph Juarez, Regional Administrator, ETA Dallas Regional Office

**STATE OF NEW MEXICO
WAIVER REQUEST
WORKFORCE INVESTMENT ACT**

Requesting Transfer of WIA Funds between Adult and Dislocated Worker Programs

The New Mexico Department of Workforce Solutions (NMDWS), the state Administrative Entity for the Workforce Investment Act, (WIA), is requesting a waiver to **increase the ability to transfer funds between Adult and Dislocated Worker programs from 20% to 50%**. The waiver would provide expanded opportunity to transfer funds between funding streams ensuring flexibility in meeting the regional workforce needs of business.

This waiver request follows the format identified in WIA § 189(i)(4)(B) (29 USCA § 2939(i)(4)(B)) and WIA Regulations at 20 CFR § 661.420(c).

Statutory Regulations to be Waived WIA § 133(b)(4) (29 USCA § 2863(b)(4)) and WIA Regulations at 20 CFR § 667.140, provide that with the approval of the Governor, Local Workforce Development Boards may transfer up to 20 percent of a program year allocation for adult employment and training activities, and up to 20 percent of a program year allocation for dislocated worker employment and training activities between the two programs.

State or Local Statutory and/or Regulatory Barriers: There are no state or local regulatory barriers to implementing the waiver. State regulations and policy statements are in compliance with current federal law. State regulation and policy comply with the terms of the waiver.

Goals to be achieved by the Waiver: The following goals will be achieved with the grant of the waiver request:

- Increase local workforce board ability to respond to ongoing changes within their local areas
- Increase local workforce board control over program service delivery
- Improve the collaboration between industry and worker training initiatives
- Increase accountability at the state, local and service provider level for ensuring needs are met and funding is used and effectively
- Improve program design and implementation by allowing WIA service strategies to be based on need not funding streams

Programmatic Outcomes by the Waivers:

- This waiver will increase flexibility and local control to transfer funds between adult and dislocated worker programs. This flexibility would allow boards to respond to changes within their areas and address the specific geographic, demographic and industry needs which differ from community to community. Permitting the waiver would enable local boards to effectively use the limited funds to impact their communities as needed.

- Empower Boards to plan, oversee and evaluate the delivery of all workforce training and services in their respective areas. This waiver will encourage Boards to design more innovative programs unique to the specific local areas and to most advantageously use limited funds to address the established needs and priorities.
- Programs and services can be coordinated according to the specific needs of regional areas resulting in increased effectiveness
- Strengthen business partnerships and enhance employer participation positively impacting job seekers through the provision of more relevant business driven services.

Individuals Impacted by the Waiver:

If granted, this waiver will benefit all local WIA Boards, Workforce Connection Centers, business, job seekers, service providers, and all New Mexico communities. The following are additional positive impacts of the waiver:

- Program participants will benefit because Local Boards will have the flexibility to design program based on local needs and priorities.
- Increased utilization of available funds will result in more customers being served.
- Local Boards will have the flexibility to move funds where they are most needed and can provide the greatest benefit.

Process used to Monitor Progress and Implementing the Waiver:

NMDWS has a federally recognized monitoring and performance accountability system that measures and evaluates results for job seekers and employers accessing New Mexico Workforce System. NMDWS reviews and analyzes customer enrollment and service levels, program expenditures, and performance outcomes. In addition, State program monitors conduct onsite reviews designed to assure that contract requirements are being met for all WIA programs. Comprehensive compliance monitoring is conducted onsite utilizing outcome reports generated from NMVOSS, statewide database. Should this waiver request be granted, NMDWS will ensure regular review of programs to monitor provider effectiveness and compliance; outcomes and performance; and impact of the additional funds.

Notice to Boards: If the waiver is approved, NMDWS, as the State Administrative Entity, will provide information, training, and technical assistance to monitor expenditure of funds.

Solicitation of comments from local boards, labor, employers and service providers:

The proposed waiver plan was posted on-line at the Department of Workforce Solutions web page as part of the modification to the State Plan with the ability to review and comment. All comments received are considered and, if applicable incorporated into the final waiver plan. The finalized/approved waiver Plan will be forwarded to the State Workforce Development Board and all Local Workforce Development Boards.

State of New Mexico Incumbent Worker Waiver Plan

The New Mexico Department of Workforce Solutions (DWS) is New Mexico's Administrative Entity for the Workforce Investment Act (WIA). The DWS is requesting a waiver to allow local boards to designate up to 20% of their local Dislocated Worker allocation to carry out Incumbent Worker Training following the regulations identified in WIA Section 189(i)(4)(B) and WIA Final Regulations at 20 CFR Section 661.420. This waiver would remove the current provision which only allows statewide funds to be used for incumbent worker training.

The vision for New Mexico is "A trained, adaptable and skilled workforce that allows business to compete in a global economy and enables individuals to increase their economic well being." This comprehensive vision will guide the workforce investment system. The waiver plan will expand employment, occupational skill training, and support services to ensure New Mexico businesses have a skilled workforce and New Mexico job seekers have greater opportunity to retain employment with more possibility for advancement. Incumbent worker training will be used in lay-off aversion efforts and job retention strategies critical to workforce development.

Granting this waiver will benefit employers, incumbent workers and enable local areas to meet economic development needs. This plan is aligned with the Governors' economic development goals of retaining and assisting existing employers or new employers with specialized training needs in order to remain competitive in an every-changing economy. This waiver affords local boards more flexibility to support the needs of targeted business and industry.

- 1) **Statutory Regulations to be waived:** WIA requires progression through a series of core, intensive and training activities. The requirements for intensive services include, from WIA Section 134 (d)(3)(A), being "...unemployed and are unable to obtain employment through core services...", "... been determined by a one-stop operator to be in need of more intensive services in order to obtain or retain employment that allows for self-sufficiency." WIA Section 134 (d)(4)(A)(i) requires a person to have "... met eligibility requirements for intensive services..." and be "... unable to obtain or retain employment through such services." These requirements effectively block the use of local funds for Incumbent Worker Training.
- 2) **Statutory Regulations to be waived:** Incumbent worker training is an allowable statewide activity under WIA section 134(a)(3)(A)(iv)(I). A State may use funds reserved as described in sections 128 (a) and 133(a)(1) to carry out statewide employment and training activities which may include- (iv)(I) implementation of incumbent worker training. This requirement does not allow the use of Adult and Dislocated Worker funds for incumbent worker training thereby restricting the ability for local areas to support the needs of business as necessary.

Justification:

State level funds are not sufficient to meet the demand by the employer community specific to Incumbent Worker Training. If local areas were able to use Dislocated Worker funds for Incumbent Worker Training, the ability of the program to save jobs and assist existing employers to expand would be greatly enhanced.

New Mexico proposes to allow up to 20% of Dislocated Worker funds allocated to a local area under Section 136 (b) to be used to carry out Incumbent Worker Training.

This waiver would increase the role of local Workforce Development Boards and the role of employers in workforce investment activities. It would also increase local flexibility to respond to the employer community. These principles are keeping with the goals of WIA.

- **Goals to be achieved by the Waiver:** WIA provides increased flexibility to states and local areas implementing reforms to the workforce development system in exchange for state and local accountability for results, including improved programmatic outcomes. The waiver would allow local boards to implement innovative Incumbent Worker Training programs. The goals of this waiver:
 - Provide local boards the **flexibility** to be more responsive to the needs of the business community.
 - Provide local boards the ability to be more **demand-driven** in their services and strengthen their linkages with the economic development and business partners
 - Utilize Incumbent Worker training as a powerful **lay-off aversion** tool by providing employers the opportunity to develop employee skills to adapt to the changing economy and industry needs. Building and upgrading skills of current employees can help business stay competitive and increase employee retention and avert layoffs.
 - Promote Incumbent Worker training for employees facing layoff allowing them the opportunity to re-tool and build skills necessary to fill other job vacancies.

- **State or Local Statutory or Regulatory Barriers:** There are no state or local statutory or regulatory barriers to implementing the requested waiver.

- **Description of Waiver Goals and Programmatic Outcomes:** The waiver will provide local workforce investment boards the option to spend a portion of their WIA Dislocated Worker funding on Incumbent Worker Training. This type of training is a priority for employers who must upgrade worker skills and increase operational efficiency to maintain viability in today's job market. This service provides foundational support for employer

sustainability, which in turn supports job retention and the creation of new jobs.

- **Description of Individuals Impacted by the Waiver:** The waiver will immediately and most directly benefit employers, incumbent workers and workforce boards in meeting workforce development needs. This waiver initially affects individuals who are currently underemployed, increasing their skills, marketability and job retention. The impact ripples throughout the community by enhancing industry capabilities, and overall business efficiency and competitiveness.
- **Description of the Process Used to Monitor Progress:** The NM Department of Workforce Solutions will monitor progress of the waiver through the oversight of Incumbent Worker Training programs. State and Local Boards will monitor program compliance and effectiveness as well as review incumbent training services and outcomes using the Virtual One Stop System (VOSS).

The proposed waiver plan was posted on-line at the Department of Workforce Solutions web page as part of the modification to the State Plan with the ability to review and comment. All comments received are considered and, if applicable incorporated into the final waiver plan.

Conclusion: Approval of this waiver will:

- ✓ Increase local board's flexibility and capacity to respond to the employer community.
 - ✓ Expand local board partnerships with employers to promote job employment opportunities, increase employment skills and marketability, improve job retention and job creation.
 - ✓ Provide local areas with a valuable layoff aversion tool that promotes the development of employee skills to adapt to workforce and changes and challenges.
 - ✓ Provide local boards with program flexibility while maintaining performance accountability and fiscal integrity.
- **Tracking and Reporting**
Funds used for Incumbent Worker training will be tracked by funding stream as required. Performance outcomes for incumbent workers served under this waiver will be reported in the Workforce Investment Act Standardized Record Data (WIASRD)