



OCT 13 2009

The Honorable Gary R. Herbert
Governor of Utah
State Capitol
Salt Lake City, Utah 84114-2220

Dear Governor Herbert:

As part of Utah'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 the letter dated June 29, 2009, ETA granted Utah 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.
- 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 Utah'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.

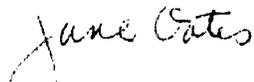
Requested Waiver: Waiver of WIA Section 134 (a) to permit local areas to use a portion of local Adult, Dislocated Worker, and Youth funds for other statewide activities

The State previously was granted a waiver of WIA Section 134 (a) to permit local areas to use a portion of local Adult, Dislocated Worker, and Youth funds for other statewide activities. The State has withdrawn the 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 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: Cynthia Green, Federal Project Officer for Utah, ETA Dallas Regional Office
Joseph Juarez, Regional Administrator, ETA Dallas Regional Office

The Utah Department of Workforce Services (DWS) recognizes the importance and flexibility waivers afford the Workforce Development System. The following three waivers are in operation and according to TEGL 14-08 are exempt from the requirement to submit a full waiver plan for PY09:

- Subsequent Eligible Training Provider (extension)- Utah is currently working under an approved waiver to postpone the implementation of the subsequent eligibility process for Eligible Training Providers as described in the Workforce Investment Act, Section 122 (c)(5).
- Individual Training Accounts for WIA eligible youth, Utah is currently working under an approved waiver to the exclusion and regulatory prohibition of using Individual Training Accounts (ITAs) for youth.
- Reporting Performance Outcome Measures for Workforce Investment Act Title I; Wagner Peyser Act (Labor Exchange); Jobs for Veterans Act of 2002 (Title 38 USC); and Trade Act. Utah is currently working under an approved waiver to enable Utah's workforce development partners to implement the six (3 adult and dislocated worker, and 3 youth) common performance measures and waive the requirement to report on the seventeen (15 core and 2 customer satisfaction) indicators of performance for employment and training activities.

In conjunction with the State Workforce Investment Board (SWIB), Utah is seeking approval for the following waivers for PY09.

Waiver 1 –

Allow up to 100% transfer between WIA Adult and WIA Dislocated Worker regular funding streams.

The Utah Department of Workforce Services (DWS) provides the following waiver request to waive the statutory exclusion and regulatory prohibition of the transfer of no more than 20% of the programs year's allocation between the Adult and Dislocated Worker funding streams. The waiver would grant the State Workforce Investment Board (SWIB) the ability to transfer up to 100% of PY09 regular allocation between the Adult and Dislocated funding streams.

The State has found this additional transfer allowance to be beneficial in local planning and in meeting service needs. This proposed waiver, allowing up to 100% transfer, would further enhance Utah's ability to address workforce needs within the state. A specific example of when this waiver has been beneficial to Utah is when increased numbers of dislocated workers seeking training services and current funding levels are unable to support the increase, this waiver has been enacted to move adult funding into dislocated worker funding.

Prior to any movement between program funding, a needs analysis would be performed to determine the impact and potential benefit of moving funds taking into account the current economic situation, the current population seeking assistance, and the remaining availability of funding. The following entities will be consulted in this needs analysis process:

- Rapid Response Unit
- DWS Economists
- SWIB
- Employment Center Operations

Utah's SWIB strongly endorses this waiver. Approval of this waiver request would contribute to alignment of Utah's workforce development strategy with the Governor's vision for a more integrated and effective workforce system to meet the economic demands of the State.

1. **Statutory Regulations to be waived:** WIA Final Regulations 20 CFR Sections 133 (b) (4) and 20 CFR 667.140 (a) provide that with the approval of the Governor, States may transfer up to 20% of a program year's allocation for adult employment and training activities, between the two programs. Federal appropriations bills enacted for fiscal years 2003 and 2004 included a provision that allowed transfer up to 30% of funding between both the adult and dislocated worker programs.
2. **State or local statutory regulator barriers:** There are no state or local statutory or regulatory barriers to implementing the proposed waiver.
 - a. Necessary mechanisms will be put in place that ensure a needs analysis process is in place to address funding transfer requests.
3. **Goals to be achieved by the Waiver:**
 - a. Allows Utah the flexibility to meet the needs of the current population seeking assistance.
 - b. Ensuring Utah's Workforce Investment System can meet the demands of the current economic situation.
 - c. Improve the ability of the SWIB to provide targeted assistance in response to customer needs.
4. **Programmatic Outcomes achieved by the Waiver:**
 - a. Flexibility in service delivery.
 - b. The system will be more responsive to the changing economic conditions of the State.
 - c. Potential for an increased number of customers served.
5. **Individuals impacted by the waiver:** The waiver is expected to benefit DWS customers, SWIB, DWS, and the Utah economy.
 - a. SWIB and DWS will have the flexibility to serve those most impacted by the economic downturn.
 - b. DWS customer will receive services appropriate to help them regain employment.
 - c. Increased utilization of funds will result in stimulating local economy and trained and skilled customers will have a higher probability of regaining

employment therefore, contributing to the overall economic situation of Utah.

6. **Process used to monitor progress in implementing the waiver:** DWS is the State administrative entity for the Workforce Investment Act. The waiver enables Utah the flexibility to design seamless delivery of services and to customize the planning and service delivery for applicable programs. It also allows DWS a continuum of services by transferring funds to serve those customers seeking services. The Utah DWS will monitor the waiver through a combination of reporting from the local level, state oversight, and evaluation. Regular evaluation of financial, economic data and the customers seeking services throughout the state will occur to determine the impact of the waiver approval. To ensure fiscal integrity, there will be both adequate oversight and complete, consistent reporting. The State will also gather information through discussion on the progress of the implementation of the waivers, addressing concerns and obstacles encountered, if any.
7. **Process for notice of local boards and opportunity to comment:** Consistent with the general waiver request, the State is adhering to publication requirements to insure the broadest participation possible, including appropriate partners and interested parties such as labor, community based organizations, and the SWIB. Utah adheres to public notice requirements as specified in WIA section 189(i)(4)(B) and 20 CFR 661.420(c)

(i) **Provide notice to any Local Board affected by the waiver:**

Although Utah is a WIA single state workforce investment area, each of the state's five administrative regions have local regional councils on workforce services (as created under state law in 1996) that have provided waiver development input and approval to this Waiver plan.

(ii) **Provide any Local Board affected by the waiver an opportunity to comment on the request:**

Refer to Item above explaining Utah's Single State Service Delivery.

(iii) **Ensure meaningful public comment, including comment by business and organized labor, on the waiver:**

DWS published the Waiver Plan for public comment at www.jobs.utah.gov allowing sufficient time for the public to review and comment. DWS also sent e-mail communication to council members and stakeholders informing them of the opportunity to comment, and providing the deadline for input. Comments were reviewed and incorporated into the Waiver Plan.

Utah appreciates the flexibility afforded to states through the waiver process and anticipates the SWIB waiver plan provides adequate accountability and improved performance for DOL approval.

Waiver 2 –

Exclusion from common performance measures for ARRA Youth who participates in work experience only and allow Utah the flexibility allowed in TEGL 14-08, Guidance for Implementation of the WIA and Wagner-Peyser Act Funding in the ARRA of 2009 and State Planning Requirements for PY09.

Allow the use of the Work Readiness indicator as the only indicator of performance, excluding them from common measures, and allow the service element delivery flexibility for youth participating in the ARRA of 2009 Stimulus Internship (work experience) program beyond the summer months (10/01/09 to 3/31/10) as allowed in TEGL 14-08.

Utah Department of Workforce Services (DWS), the administrative entity for the Workforce Investment Act (WIA), requests waiver of the statutory, regulatory and guidance letter requirements mentioned in the statements below to successfully and efficiently implement the ARRA for youth.

Utah will implement this waiver for ARRA youth immediately upon Department of Labor Employment and Training Administration's (DOLETA) approval of the request.

1. Statutory Regulations to be waived:

- Performance measures - the regulations are in 20 CFR Part 666.100, the statute is in WIA Section 136(b) and the DOLETA guidance is in Training and Employment Guidance Letter 17-05, Common Measures Policy for the Employment and Training Administration's Performance Accountability System.
- Service element flexibility:
 - Assessment – the regulations are in 20 CFR Part 664.400 and statute is in WIA Law Section 129(c)(1)(a).
 - Youth service elements – the regulations are in 20 CFR Part 664.410 and statute is in WIA Law Section 129(c)(2).
 - Follow-up – the regulations are in 20 CFR Part 664.450 and statute is in WIA Law Section 129(c)(2)(i).

2. State or local statutory regulatory barriers: In anticipation of approval of the waiver, Utah DWS reviewed State statute and rules for contradictions, and updated DWS policies and procedures and administrative rules to comply with the terms of the waiver. Research of State law resulted in determining there are no conflicting statutes.

3. Justification for the request and goals to achieve with the waiver:

- Performance measures- Utah is requesting to implement the flexibility allowed in ARRA, Division A, Title VIII, 2 and TEGL 14-08. The duration of services provided under this law are unique and offer valuable work experience to individuals during this economic downturn that is not normally offered through regular WIA Youth program. The flexibility this

waiver would provide allows Utah to quickly serve these individuals and ensure these funds are flowing into the economy quickly and efficiently with the goal of increased work readiness skills without the burden of capturing and calculating the regulatory and statutory performance measures.

- Youth service elements - Utah is requesting to implement the flexibility allowed in ARRA Title VIII, 2 and TEGL 14-08. The duration of services provided under this law are unique and offer valuable work experience to individuals during this economic downturn that is not normally offered through regular WIA Youth program. The flexibility this waiver would provide allows Utah to quickly serve these individuals and ensure these funds are flowing into the economy quickly and efficiently with the goal of streamlining service elements so fundamental work experience and supportive services are available to participants as follows:
 - Assessment/Academic Learning – Use a work readiness assessment tool based on the Secretary’s Commission on Attaining Necessary Skills (SCANS) competencies as the means of assessing pre and post-program work readiness levels, and linking the importance of academic learning with the summer work experience.
 - Youth service elements – Deliver only work experience (Summer Youth Employment Opportunities or paid youth internship/worksite learning (if funds remain after 9/30/09)) and supportive services to youth participating in the ARRA.
 - Follow-up – Eliminate the required 12 month follow-up service.
4. **Programmatic outcomes achieved by the Waiver:** Continue to provide ARRA services to eligible youth ages 18-24 with remaining ARRA funding beyond September 30, 2009 through March 31, 2010. Streamline service elements available with ARRA funding to deliver a targeted, highly efficient work experience program, and report work readiness skills goals as the single performance outcome measure for the program.
 5. **Individuals affected by the waiver:** Continue to provide ARRA services to eligible older youth as long as ARRA funding is available, but not to exceed March 31, 2010.
 6. **Process used to monitor progress in implementing the waiver:** DWS is the State administrative entity for the Workforce Investment Act. The waiver enables Utah the flexibility to design seamless delivery of services and to customize the planning and service delivery for applicable programs. It also allows DWS customers a continuum of services if funds are available. DWS will monitor the waiver through a combination of reporting from the local level, state oversight, and evaluation. Regular evaluation of funding will occur to determine the availability of continued services. To ensure fiscal integrity, there will be both adequate oversight and complete, consistent reporting.
 7. **Continued service plans for the individuals:** For ARRA Youth wanting additional services at the completion of work experience, or remaining on the program at March 31, 2010, an evaluation of appropriateness will be performed to

determine on going service needs. Enrollment into other eligible programs will occur.

8. **Process for notice of local boards and opportunity to comment:** Consistent with the general waiver request, the State is adhering to publication requirements to insure the broadest participation possible, including appropriate partners and interested parties such as labor, community based organizations, and the SWIB. Utah adheres to public notice requirements as specified in WIA section 189(i)(4)(B) and 20 CFR 661.420(c)

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- (iv) **Provide any Local Board affected by the waiver an opportunity to comment on the request:**

Refer to Item above explaining Utah's Single State Service Delivery.

- (v) **Ensure meaningful public comment, including comment by business and organized labor, on the waiver:**

DWS published the Waiver Plan for public comment at www.jobs.utah.gov allowing sufficient time for the public to review and comment. DWS also sent e-mail communication to council members and stakeholders informing them of the opportunity to comment, and providing the deadline for input. Comments were reviewed and incorporated into the Waiver Plan.

Utah appreciates the flexibility afforded to states through the waiver process and anticipates the SWIB waiver plan provides adequate accountability and improved performance for DOL approval.