

NOV 9 - 2009

The Honorable Arnold Schwarzenegger
Governor of California
State Capitol
Sacramento, California 95814

Dear Governor Schwarzenegger:

As part of California'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 California approval of the following waivers through June 30, 2010:

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

The approval for these waivers remain in effect. The letter dated June 29, 2009 granted temporary extensions of the remainder of California'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.

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 10 percent of local Dislocated Worker funds and up to 10 percent of 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 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 American Recovery and Reinvestment Act of 2009. However, the State is permitted to transfer up to 30 percent of ARRA funds between programs under WIA and under the Department of Labor Appropriations Act of 2009. This authority is discussed in TEGL No. 14-08, change 1.

Requested Waiver: Waiver of the required 50 percent employer contribution for customized training at WIA Section 101(8)(C).

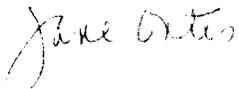
The State is requesting a waiver of the required 50 percent employer contribution for customized training to permit the use of a sliding scale for the employer contribution based on the size of the business. The State is granted this waiver through June 30, 2010. Under the waiver, the following sliding 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.

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 Richard Trigg, the Regional Administrator for Region VI, at (415) 625-7900 or Trigg.Richard@dol.gov.

Sincerely,



Jane Oates
Assistant Secretary

Enclosure

cc: Ralph Zackheim, Federal Project Officer for California, ETA San Francisco Regional Office

STATE OF CALIFORNIA
WORKFORCE INVESTMENT ACT (WIA)
WAIVER REQUEST

Incumbent Worker Training at the Local Area Level

The California Workforce Investment Board (State Board) and the Employment Development Department (EDD), as the administrative entity of the Workforce Investment Act (WIA) in California, submit this request for a waiver of the restrictions on the use of both regular and American Recovery and Reinvestment Act (ARRA) local WIA formula funds for Incumbent Worker Training at the Local Workforce Investment Area (Local Area) level. This waiver would allow Local Workforce Investment Boards (Local Boards), at their discretion, to use up to 20 percent of Local Area regular formula and ARRA funds for adults and dislocated workers [WIA Section 133(b)] to provide statewide employment and training activities identified at WIA Section 134 and 20 CFR 667.130, specifically to carry out Incumbent Worker Training programs specifically for layoff aversion at the Local Area level. This waiver will apply to Program Year 2009 and subsequent years.

In keeping with the guidelines set forth at WIA Section 189(i)(4)(b), 20 CFR Part 661.420(c) and additional guidance provided to the states specific to IWT waivers, please accept the following as a request for a waiver.

A. Statutory or Regulatory Requirements to be Waived

The State of California requests a waiver from the provisions of WIA Sections 134 (Use of Funds for Employment and Training Activities), as well as a waiver from the provisions of WIA regulation at 20 CFR 663.145 regarding the use of WIA Title I Adult and Dislocated Workers formula funds.

B. Goals of the Waiver and Expected Programmatic Outcomes if Waiver is Granted

California has the largest labor market in the United States. In 2008, nonfarm payrolls totaled 14,994,100 jobs, comprising 10.9 percent of the nation's nonfarm jobs. In addition, California had 390,900 jobs in the farm sector for a total of 15,385,000 jobs in 2008. In the second quarter of 2009, the California economy was gripped by a severe recession characterized by deepening job losses and rapidly rising unemployment. California's economic problems originated in the housing and financial sectors, spread into the consumer economy, and subsequently into the rest of the economy. Unemployment is highest in low skill occupations. Mass layoff events have increased. Job losses are expected to continue into 2010.

Investing public resources to support technical and/or soft skills training of incumbent workers is a practical layoff aversion strategy for the state. It retains good jobs in California's targeted sectors. These identified (targeted) industry sectors play a key role in the state's economic success. The State Workforce Investment Board (State Board) in collaboration with the Economy Strategy Panel continues to invest in the development and implementation of the Regional Economies Project Industry Clusters of Opportunity Methodology (ICM). This economic analysis identifies on a regional basis, those industries that are emerging and those that are critical to the economic competitiveness of California's economy, which may require intervention to ensure viability for the long term. To further this effort, the State Board is preparing to release a solicitation to assist existing regional collaboratives, or the formation of new regional partnerships to use the ICM to establish sector strategies, targeting those industries and its employees, identified through the regional data analysis.

The application of this ICM framework, assures that funds used for incumbent worker training, benefit the employee and employer, as well as improve the region's economic vitality. The continued use of other existing methods such as WARN Notices will also complement the use of ICM. This waiver also provides the Local Board with greater flexibility in the use of WIA formula funds to participate in the regional collaborative and leverage the full capability of the system's resources and not be constrained by the silos typically associated with WIA funding streams.

Additionally, the plan for incumbent worker training, as part of California's layoff aversion strategy, will target industries and economic sectors, which offer high skill and high wage jobs. One of these sectors is the green economic sector. California has a long-standing history of leading implementation of environmental policy. Most recently, the enactment of the California Global Warming Solutions Act (AB32) and the Alternative and Renewable Fuel and Vehicle Technology Program (AB118) have demonstrated that California is becoming a national and global leader in combining advances in public policy and private sector innovation to enhance both environmental quality and economic growth. In addition, the Governor signed the Green Collar Jobs Act, establishing the Green Collar Jobs Council (GCJC) under the State Workforce Investment Board and directing the development of a statewide sector strategy targeting the emerging Green economy.

The types of training that will be provided include occupational skills training designed to meet the special requirements of a business and is conducted with employer commitment to continue to retain all trained individuals upon successful completion of the training, educational training, training in strategies to improve efficiency of business operations, and computer software training. Training is expected to provide skills, which result in the employer being able to adjust to a changing economic climate by providing the jobs necessary to do so, thus averting layoffs. Training is also expected to provide skills for employees, which will permit advancement to higher skilled, higher paying jobs and job retention.

The IWT layoff aversion strategy will continue to be coordinated with other existing services accessible through One Stop Career Centers throughout California and will help to ensure to the extent possible a maximum return of investment as the 49 Local Areas that comprise California's workforce system continue to face a wide range of distinct economic challenges due largely to the national economic downturn which in California, like many other states has resulted in excessively high unemployment.

Criteria will be established to identify appropriate uses of incumbent worker training. Employers will be selected where economic indicators demonstrate a need for incumbent worker training as part of a layoff aversion strategy. Such indicators may include announced layoffs or reduced work schedules. An analysis will be performed to ensure the training provides the employees with the skills necessary to enable the employer to maintain operations and avert layoffs, or even closure. Employers will be required to demonstrate a commitment to retain the employee, to pay the employee a higher wage or otherwise provide a tangible benefit to the employee.

California's workforce system is comprised of 49 Local Workforce Investment Areas which are independently locally operated by a Local Workforce Investment Board. As such, the local areas have a large degree of flexibility to develop programs and deliver services that best address the unique needs of the local labor market. Because of their connection with the employer community, Staff at the local area are in the best position to identify opportunities for utilizing the IWT service strategy and for developing appropriate criteria for implementing the IWT layoff aversion strategy together with Rapid Response and other economic development strategies.

C. State or Local Statutory or Regulatory Barriers

There is no State or local statutory or regulatory barriers to implementing the proposed waiver.

D. Description of Individuals Impacted by the Waiver

This waiver plan will positively affect businesses by reducing the risk of layoff or closure because workers have not kept current with new skills and technologies. It also has the

potential, as businesses expand due to the enhanced skills of their current workers, to stimulate new, lower-skill positions and to create openings in positions vacated by incumbent workers who receive skills upgrade training. The training provided to individuals will make them more valuable to current and future employers. This waiver plan increases the role Local Boards as workforce intermediary and the role of business in the workforce development system. It also increases local flexibility to respond to the business community, in keeping with the goals of the WIA.

E. Opportunity for Public Comment and the Process for Monitoring Implementation of the Waiver

This request was developed as a result of concerns expressed by Local Boards and demand from business partners. As with all other major policy and procedural decisions made by the State, we relied heavily upon input from local partners. The problems with limiting Incumbent Worker Training programs to the Governor's discretionary funds were discussed with local partners to gain input on those problems and on the benefits of being granted this waiver. The initial waiver was made available for public comment for a 30-day period and the same period was repeated in conjunction with the state's planning for submittal of the Plan modification for Program Year 2009.

The State Board and the EDD, as the administrative entity of the WIA in California, will monitor all incumbent worker training by Local Boards. The State's current policy directive and monitoring policy/procedures will be modified, as necessary, to include this waiver. Funding will be tracked by funding stream.

**STATE OF CALIFORNIA
WORKFORCE INVESTMENT ACT (WIA)
WAIVER REQUEST**

Customized Training Match

The California Workforce Investment Board (State Board) and the Employment Development Department Workforce Services Branch (WSB), as the administrative entity of the WIA in the State of California, submit this request renewal of the general waiver that changed the required 50 percent employer match for customized training at WIA 101(8)(C) to a match based on a sliding scale, ranging from 10 to 50 percent for the employer match. Specifically, the Governor shall establish, or may authorize the Local Workforce Investment Boards (Local Boards) to establish the required portion of the costs, which shall not be less than 10 percent of the costs for employers with 50 or fewer employees, 25 percent of the costs for employers with greater than 50 through 100 employees, and 50 percent of the costs for employers with more than 100 employees. This waiver will apply to Program Year 2009 and subsequent years.

In keeping with the guidelines set forth at WIA Section 189(i)(4)(b) and 20 CFR Part 661.420(c), please accept the following as a request for the continuation of this waiver.

A. Statutory or Regulatory Requirements to be Waived

The State of California is requesting a continuation of the waiver of the requirement of the 50 percent employer match for customized training, as identified at WIA Section 101(8)(C). This waiver was first implemented in November 2006.

B. Goals of the Waiver and Expected Programmatic Outcomes if Waiver is Granted

The proposed sliding scale provides the Local Boards with greater flexibility for responding to changes in their local labor markets and helps ensure that the WIA funds allocated to each Local Workforce Investment Area are being utilized in a way that will maximize customer service and other demand-driven needs of the business community.

By removing the requirement of a 50 percent employer match towards the cost of training to businesses with 100 or less employees, Local Boards will be able to more effectively market WIA-funded customized training to the private sector in support of building relations with employers in demand/growth industries.

The proposed sliding scale for the employer match creates the necessary flexibility for employers to provide the required match at a level more reasonably suited to their size and the cost benefit ratio of contributing to a match to receive skilled employees. Allowing businesses to apply the sliding scale to determine the match amount will increase participation in the WIA customized training programs at the local level. Local

Boards will increase their participation rates for skilled job seekers that received training and found employment. Employers will benefit by having a labor pool with the marketable skills they require.

C. State or Local Statutory or Regulatory Barriers

There are no State or local statutory or regulatory barriers to implementing the proposed waiver.

D. Description of Individuals Impacted by the Waiver

Individuals affected by this waiver are employers with 100 or fewer employees, who will benefit from the waiver due to the reduced match requirement and the ability to train a small number of individuals to their unique specifications. Adults, older Youth, and Dislocated Workers who receive customized training and subsequent employment will also benefit.

E. Opportunity for Public Comment and the Process for Monitoring Implementation of the Waiver

This original request was developed as a result of concerns expressed by Local Boards and demand from business partners. As with all other major policy and procedural decisions made by the State, we relied heavily upon input from local partners. The problems with the current 50 percent requirement for employer match for customized training were discussed with local partners to gain input on those problems and on the benefits of being granted this waiver. The initial waiver was made available for public comment for a 30-day period prior and the same period was repeated in conjunction with the state's planning for submittal of the Plan modification for Program Year 2009.

The State Board and the WSB, as the administrative entity of the WIA in California, monitor all incumbent worker training by Local Boards. The State's current policy directive and monitoring policy/procedures have been modified, as appropriate, to include this waiver.

**STATE OF CALIFORNIA
WORKFORCE INVESTMENT ACT (WIA)
WAIVER REQUEST**

Transfer Authority

The California Workforce Investment Board (State Board) and the Employment Development Department Workforce Services Branch (WSB), as the administrative entity of the WIA in California, submit this request for a general waiver to renew the existing transfer authority of Local Workforce Investment Boards (Local Boards) for Adult and Dislocated Worker funds. This waiver will apply to Program Year 2009 and subsequent years. The current approved transfer amount is 50 percent.

In keeping with the guidelines set forth at WIA Section 189(i)(4)(b) and 20 CFR Part 661.420(c), please accept the following as a request for a waiver.

A. Statutory or Regulatory Requirements to be Waived

WIA Section 133(b)(4) and 20 CFR Part 667.140 state that a Local Board may transfer, if such a transfer is approved by the Governor, not more than 20 percent of the funds allocated to the Local Workforce Investment Area (Local Area)...for a fiscal year between Adult employment and training activities and Dislocated Worker employment and training activities. [Note, the Appropriations Act of 2005 kept the transfer limit at 30 percent for PY 2005-06 funds.]. The state of California requested and received approval of its increased transfer authority in October 2006.

B. Goals of the Waiver and Expected Programmatic Outcomes if Waiver is Granted

The increase to 50 percent has provided the Local Boards with greater flexibility for responding to changes in their local labor markets and helps ensure that the WIA funds allocated to each Local Area are being utilized in a way that maximizes customer service and other demand-driven needs of the business community. The goal is increased flexibility for the Local Areas in allocating and expending Adult and Dislocated Worker funds. Such flexibility enables Local Areas to better serve the needs of their customers and heightens their ability to respond to changes in local labor markets, particularly to respond to the growing employer demand for Employed Worker Training. This increased flexibility also allows greater responsiveness to deal with massive worker dislocations affecting large and small business throughout California, a flexibility that is much needed in the rapidly changing economy of California.

C. State or Local Statutory or Regulatory Barriers

There is no State or local statutory or regulatory barriers to implementing the proposed waiver.

D. Description of Individuals Impacted by the Waiver

All Adults and Dislocated Workers, as well as business customers, benefit from the waiver. Granting the Local Boards the ability to move substantial funds to the areas of greatest need ensures optimum service to the general population of that workforce area. Additionally, this ability will allow Local Areas to make better use of formula funds for incumbent worker training, should this waiver request be granted, thereby focusing more effort on economic growth in high-level skills occupations.

E. Opportunity for Public Comment and the Process for Monitoring Implementation of the Waiver

This request was initially developed as a result of concerns expressed by Local Boards and demand from business partners. As with all other major policy and procedural decisions made by the State, we relied heavily upon input from local partners. The problems with the current 20 percent (30 percent for Program Year 2005-06) limitation on funds transfers between Adult and Dislocated Worker funding streams were discussed with local partners to gain input on those problems and on the benefits of being granted this waiver. The initial waiver was made available for public comment for a 30-day period and the same period was repeated in conjunction with the state's planning for submittal of the Plan modification for Program Year 2009.

The State Board and the WSB, as the administrative entity of the WIA in California, will continue to monitor all incumbent worker training by Local Boards. The State's current policy directive and monitoring policy/procedures have been modified, as appropriate, to include this waiver.