

NOV 9 - 2009

The Honorable Ted Kulongoski
Governor of Oregon
160 State Capitol
900 Court Street
Salem, Oregon 97301

Dear Governor Kulongoski:

As part of Oregon'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.

The letter dated June 29, 2009, to Oregon granted 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 approvals for these waivers remain in effect. The letter dated June 29, 2009 granted temporary extensions of the remainder of Oregon'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 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 State is required to report performance outcomes for any individual served under this waiver in the Workforce Investment Act Standardized Record Data system (WIASRD).

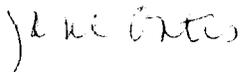
Requested Waiver: Waiver of WIA Section 134(a)(1)(A) to permit a portion of the funds reserved for rapid response activities to be used for incumbent worker training.

The State is requesting a waiver to permit use of rapid response funds for incumbent worker training. The State is granted this waiver through June 30, 2010. 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. ETA believes limiting incumbent worker training to 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. The State is required to report performance outcomes for any incumbent workers served under this waiver in the Workforce Investment Act Standardized Record Data system (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 the American Recovery and Reinvestment Act of 2009, 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 Recovery Act 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 the American Recovery and Reinvestment Act of 2009.

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: Ingrid Nyberg, Federal Project Officer for Oregon, ETA San Francisco Regional Office

STATE OF OREGON

WIA WAIVER REQUEST

WAIVER ALLOWING FOR THE USE OF UP TO 20 PERCENT OF RAPID RESPONSE STATE SETASIDE FUNDS FOR THE PURPOSES ALLOWED FOR STATEWIDE ACTIVITIES FUNDS

Introduction

According to a recent national study (Council for Adult and Experiential Learning – CAEL) Oregon has 287,000 adults aged 18-65 without a high school diploma or its equivalent. This represents 11 percent of the working-aged adults in the state. Employers are currently counting on these workers to produce products to keep their businesses competitive in the global market. The jobs that are expected to support the economy in the coming years will depend on a skilled workforce that is able to learn and adapt quickly to new challenges. As the economy and skill requirements for employment change, low-skilled workers are having a difficult time keeping up. Increasing the skills of low-skilled adults is being recognized by policy-makers as a priority for the state. Education, training and other skill enhancements for incumbent workers is a part of the solution to this problem.

Oregon's incumbent worker training program, a Governor's initiative called the Employer Workforce Training Fund, is made up of Governor's reserve (known as 15%) funds and state set-aside Rapid Response (known as 25%) funds. The Rapid Response funds are more restrictive; they cannot be used for the training of incumbent workers, only for devising and overseeing strategies for the program or projects. At first, Oregon distributed both funding streams to Workforce Response Teams in Oregon's 15 workforce regions to carry out incumbent worker training projects, tied to demand in their regional economies. The state instructed the teams' regional fiscal agents to keep the funds and their allowable uses separate. This was a cumbersome process that was incomprehensible to business, and it limited the creativity of local program operators and diminished the numbers of incumbent workers who could receive training.

When this waiver was originally approved in 2004, it allowed the WRT fiscal agents (now the local boards) to treat the combined funds as "one fund" in contracts to businesses while maintaining discrete records to be able to report by fund to the state and subsequently to DOL. Even more importantly, it increased the amount available statewide for incumbent worker training.

Of course, those were good economic times. As the economy changed, fewer funds were made available for incumbent worker training, since the rapid response funds were needed for dislocated worker activities as the Act intended.

For this request, Oregon is following the guidance of DOL regarding waivers related to incumbent worker training. The maximum amount of Rapid Response funds to be used for incumbent worker training has been lowered from 50 percent to 20 percent. In addition, to take into consideration the state of the economy and the priorities of the administration, the included Rapid Response funds will be used only as part of a layoff aversion strategy. The same restriction will apply to any Recovery Act (ARRA) funds used for incumbent worker training.

(1) statutory or regulatory requirements for which the waiver is requested.

Oregon requests a waiver of the language limiting the authority to provide the activities at WIA section 134(a)(1)(B) to statewide reserve funds. Oregon requests to use up to 20 percent of Rapid Response funds for incumbent worker training as part of a layoff aversion strategy.

Oregon will continue to carry out all required state level activities; the use of rapid response funds will be for allowable activities only. The use of funds will not diminish the ability of the state or local areas to respond to worker dislocations, nor will it affect local formula allocations for carrying out WIA Title IB adult, youth, and dislocated worker activities.

(2) Actions the state has undertaken to remove state or local statutory or regulatory barriers.

There are no state or local statutory or regulatory barriers to the use of state set-aside funds in this manner. The state follows the federal rules. The state has done what it can in budgeting the Employer Workforce Training Fund to minimize rapid response in the fund and maximize the statewide activities governor's reserve in the fund.

(3) The goals of the waiver, how the goals relate to the goals of the strategic plan and expected programmatic outcomes if the request is granted.

Goals of the waiver

The overall goal of the Employer Workforce Training Fund is:

“To support the retention and growth of living wage jobs, a skilled workforce, and competitive business in Oregon.”

This goal is accomplished through coordination of economic development, workforce development and training entities at the local level in Workforce Response Teams to develop training projects to address the training needs of existing businesses.

The waiver will:

- Increase the effectiveness and outcomes of this training fund and will result in more incumbent workers being trained, and
- Provide layoff aversion services to employers through providing incumbent workers with needed skills.

How goals relate to Strategic Plan goals

The above goal of the Employer Workforce Training Fund is very well aligned with the goals of the Oregon Workforce Investment Board's strategic plan, *Winning in the Global Market*.

To compete in the global market, Oregon must:

Ensure all Oregon employers have a competitive workforce advantage in the global market due to their highly skilled and innovative workers. Incumbent worker training is an important element of this goal. Having a skilled workforce is essential to maintaining the competitiveness of businesses, preventing layoffs and improving the overall economy of the state.

Prepare an agile, innovative workforce that has the skills employers want and is able to continuously adapt to technology changes. Incumbent worker training is part of the solution.

Build a flexible, demand-driven workforce education and training system that is outcome-based, customer-focused, accessible, adequately funded and grounded in public-private partnerships. Incumbent worker training is a real service that the system can offer employers, preventing layoffs and strengthening relationships.

Expected programmatic outcomes

The waiver has eliminated the barriers created when using two types of funding with different allowable uses to develop projects with business. These barriers include limitations on the numbers to be trained, the difficulty of tying the rapid response funding to training projects, the administrative difficulties of separately tracking the two funding sources and their allowable uses, and the difficulties of making the complexities of the funding transparent to business.

The most immediate outcome of the requested waiver will be to increase the numbers of incumbent workers who can be trained, since training will be an allowable use of the entire fund. In addition, future layoffs can be prevented using incumbent worker training as a way to provide workers with the skills they need for the employer to remain competitive.

Local Workforce Investment Boards, the fiscal agents for the Employer Workforce Training Fund, are required to report quarterly and annually in order for the state to track progress on training outcomes for the program. Although trainees are not required to be registered in Title IB, the existing MIS systems are used for reporting.

In addition, any project using Rapid Response funds as part of the funding will document the layoff aversion strategy to be used. Documentation will include such elements as the high likelihood of future layoffs without the training, the business circumstances surrounding the probable layoff and how incumbent worker training can prevent the layoff, the specific skills to be provided to the workers that will help avert the layoff, and/or the resulting employer commitment to benefit the worker such as retaining the worker or paying the worker a higher wage.

The state's overall layoff aversion approach, and how incumbent worker training fits into that approach.

The Oregon Workforce Investment Board's Strategic Plan, *Winning in the Global Market*, makes it clear that the strength of Oregon's economy rests on the skills of its workforce. Even in a very difficult economy, companies with a skilled workforce have a competitive advantage. Oregon's workforce education system is increasingly skills-based. The one-stop integration initiative, career pathways, and other aspects of the system are targeted towards increasing the skills of the state's workforce in order to make the state and its businesses more competitive in the global market. Layoff aversion is an important part of these combined strategies. Laid-off or other unemployed workers are not the only Oregonians needing skill development – incumbent workers also must increase their skills for their employers to remain in business. This is the basis for incumbent worker training as part of an overall layoff aversion strategy.

Plan for how the incumbent worker training will be delivered.

In Oregon, the state sets the overall strategy framework, and local boards and providers have the flexibility to meet local needs by developing local strategies and policies within the state framework. Oregon's Governor has four focus areas for workforce development: manufacturing, health care, green jobs, and high-wage high-demand jobs statewide. All investments of Governor's Reserve funds, both formula funds and Rapid Response funds, are targeted to these four focus areas. Local Boards have submitted plan modifications detailing local strategies to address these four focus areas.

In addition, funds expended on incumbent worker training must be part of a layoff strategy. Local boards, when conducting incumbent worker training using the rapid response funds, must document such elements as the high likelihood of future layoffs without the training, the business circumstances surrounding the probable layoff and how incumbent worker training can prevent the layoff, the specific skills to be provided to the workers that will help avert the layoff, and/or the resulting employer commitment to benefit the worker such as retaining the worker or paying the worker a higher wage.

The criteria the state will consider in identifying appropriate uses of incumbent worker training.

The Employer Workforce Training Funds (EWTF), which contain Rapid Response Funds, are passed down to local boards by EWTF formula. Local Boards, through local Workforce Response Teams, set priorities for the use of incumbent worker training as part of a layoff strategy. Developed within the state policy framework, these priorities could include such elements as industry sector, partner identification of business need (e.g., Economic Development), or as part of services offered to businesses through the WorkSource Oregon Centers. These priorities are collaboratively developed by Local Boards working closely with workforce partners including state agencies, service providers, and organized labor.

These criteria are best developed locally. By the time the State receives a WARN notice, it is often too late for incumbent worker training to avert the layoff. Companies in financial difficulties are usually reluctant to reveal the extent of their layoff plans due to proprietary or competitive reasons. Early warning of layoffs most often happens by word of mouth, through established partner networks or because of longstanding relationships with individual businesses.

(4) Description of the individuals affected by the waiver

The Employer Workforce Training Fund supports a program to train incumbent (current) workers. For the purposes of this program, “current worker” is defined as “an individual currently employed in an existing non-public business in Oregon.”

Because of the nature of the Rapid Response funding, the affected incumbent workers served by these funds will be at risk of layoff due to the skill requirements the employer needs workers to have in order to remain competitive.

(5) Processes used to monitor implementation, provide notice to any local board affected by the waiver, provide affected local boards opportunity to comment, and ensure meaningful comment, including comment from business and labor

Monitor the progress in implementing the waiver

Because the Employer Workforce Training Fund has specific, quantifiable training outcomes, it has been possible to measure the effectiveness of the program before and after the waiver is implemented. With the original waiver the numbers of incumbent workers trained increased, and the relative numbers are expected to be maintained. These are “relative” numbers since the overall amount of funding will decrease.

The Employer Workforce Training Fund and its outcomes are included in the annual monitoring carried out by the Department of Community Colleges and Workforce Development.

Provide notice to any local board affected by the waiver

This waiver was originally developed in 2004 at the request of local boards. The boards were concerned because of the difficulty of developing effective training programs using the two types of funding. State staff developed the concept for the waiver and presented it to local board staff at a regular meeting of the Oregon Workforce Partnership (OWP – the local board association in Oregon). Since that time, local board staff have continued to support the waiver and its implementation. For this submission, local boards were advised of the state’s intention to request an extension. Local boards were also included in the notification of public review described below.

Ensure meaningful comment, including comment from business and labor

The original waiver submission was supported by an extensive public review process.

For this extension, the draft State Plan Modification underwent a 15-day public review process. The intent of the state to request extension of existing waivers was included in the draft along with a brief explanation of each. A public notice was published in newspapers statewide and the notice was mailed or emailed to over 400 individuals and organizations including business and labor organizations. No comments were received.

STATE OF OREGON

WIA WAIVER REQUEST

**WAIVER ALLOWING FOR THE USE OF UP TO 20 PERCENT OF LOCAL
DISLOCATED WORKER FORMULA FUNDING FOR INCUMBENT WORKER
TRAINING**

Introduction

According to a recent national study (Council for Adult and Experiential Learning – CAEL) Oregon has 287,000 adults aged 18-65 without a high school diploma or its equivalent. This represents 11 percent of the working-aged adults in the state. Employers are currently counting on these workers to produce products to keep their businesses competitive in the global market. The jobs that are expected to support the economy in the coming years will depend on a skilled workforce that is able to learn and adapt quickly to new challenges. As the economy and skill requirements for employment change, low-skilled workers are having a difficult time keeping up. Increasing the skills of low-skilled adults is being recognized by policy-makers as a priority for the state. Education, training and other skill enhancements for incumbent workers is a part of the solution to this problem.

This waiver was originally requested by the Local Workforce Investment Boards in the WIRED region (and later, by all Local Boards) to assist in further advancing Oregon's workforce development system to be more demand-driven, flexible and responsive to its users. For this request, Oregon is following the guidance of ETA regarding waivers related to incumbent worker training. To take into consideration the state of the economy and the priorities of the administration, the use of local formula funds for incumbent worker training will be limited to Dislocated Worker program funds, the percentage of local Dislocated Worker formula funds to be used for incumbent worker training will be limited to 20 percent, and the reprogrammed funds will be used only as part of a layoff aversion strategy.

(1) statutory or regulatory requirements for which the waiver is requested

Oregon requests a waiver of the provisions of WIA Section 134 limiting the provision of incumbent worker training to the 15% Statewide Activities funds, to allow local boards to carry out incumbent worker training.

(2) Actions the state has undertaken to remove state or local statutory or regulatory barriers.

There are no state or local statutory or regulatory barriers.

(3) The goals of the waiver, how the goals relate to the goals of the strategic plan and expected programmatic outcomes if the request is granted.

Goals of the waiver

The waiver would allow Local Workforce Investment Boards (LWIBs) to use a portion of their formula funds to conduct incumbent worker training for the purposes of layoff aversion. Incumbent workers would be defined as employed; and would not have to meet other eligibility requirements. This allows greater flexibility in meeting the needs of targeted sectors or individual employers, and incumbent workers facing possible layoff.

The goals of the waiver are to:

- Increase flexibility for LWIBs in meeting the needs of employers and workers
- Prevent possible layoffs by providing needed training
- Maintain and increase the competitiveness of Oregon employers, allowing them to remain in business or expand.

How goals relate to Strategic Plan goals

The purposes of the waiver are very well aligned with the goals of the Oregon Workforce Investment Board's strategic plan, *Winning in the Global Market*.

To compete in the global market, Oregon must:

Ensure all Oregon employers have a competitive workforce advantage in the global market due to their highly skilled and innovative workers. Incumbent worker training is an important element of this goal. Having a skilled workforce is essential to maintaining the competitiveness of businesses, preventing layoffs and improving the overall economy of the state.

Prepare an agile, innovative workforce that has the skills employers want and is able to continuously adapt to technology changes. Incumbent worker training is part of the solution.

Build a flexible, demand-driven workforce education and training system that is outcome-based, customer-focused, accessible, adequately funded and grounded in public-private partnerships. Incumbent worker training is a real service that the system can offer employers, preventing layoffs and strengthening relationships.

Expected programmatic outcomes

The waiver will enhance the ability of local WIBs to improve job retention, avoid layoffs, and increase the competitiveness of the sectors targeted in the WIRED initiative region and statewide.

The flexibility provided would encourage Local Workforce Boards to increase their services and become more responsive and innovative in meeting existing and new customers' needs.

The state's overall layoff aversion approach, and how incumbent worker training fits into that approach.

The Oregon Workforce Investment Board's Strategic Plan, *Winning in the Global Market*, makes it clear that the strength of Oregon's economy rests on the skills of its workforce. Even in a very difficult economy, companies with a skilled workforce have a competitive advantage. Oregon's workforce education system is increasingly skills-based. The one-stop integration initiative, career pathways, and other aspects of the system are targeted towards increasing the skills of the state's workforce in order to make the state and its businesses more competitive in the global market. Layoff aversion is an important part of these combined strategies.

Laid-off or other unemployed workers are not the only Oregonians needing skill development – incumbent workers also must increase their skills for their employers to remain in business. This is the basis for incumbent worker training as part of an overall layoff aversion strategy. This waiver is requested to allow Local Boards the opportunity to provide incumbent worker training as a part of their overall service mix.

Plan for how the incumbent worker training will be delivered.

In Oregon, the state sets the overall strategy framework, and local boards and providers have the flexibility to meet local needs by developing local strategies and policies within the state framework. Oregon's Governor has four focus areas for workforce development: manufacturing, health care, green jobs, and high-wage high-demand jobs statewide. Local workforce investments are aligned with these four focus areas. Local Boards have submitted plan modifications detailing local strategies to address these four focus areas.

Local boards, when conducting incumbent worker training using the rapid response funds, must document such elements as the high likelihood of future layoffs without the training, the business circumstances surrounding the probable layoff and how incumbent worker training can prevent the layoff, the specific skills to be provided to the workers that will help avert the layoff, and/or the resulting employer commitment to benefit the worker such as retaining the worker or paying the worker a higher wage.

In order to take advantage of this waiver, Local boards must apply to the state for the use of the waiver. The state will apply the above policy priorities in granting the waiver.

The criteria the state will consider in identifying appropriate uses of incumbent worker training.

In implementing this waiver, Local Boards set priorities for the use of incumbent worker training as part of a layoff strategy. Developed within the state policy framework, these priorities could include such elements as industry sector, partner identification of business need (e.g., Economic Development), or as part of services offered to businesses through the WorkSource Oregon Centers. These priorities are collaboratively developed by Local Boards working closely with workforce partners including state agencies, service providers, and organized labor.

These criteria are best developed locally. By the time the State receives a WARN notice, it is often too late for incumbent worker training to avert the layoff. Companies in financial difficulties are usually reluctant to reveal the extent of their layoff plans due to proprietary or competitive reasons. Early warning of layoffs most often happens by word of mouth, through established partner networks or because of longstanding relationships with individual businesses.

(4) Description of the individuals affected by the waiver

This waiver will benefit the participating employers and incumbent workers. For the purposes of this program, an incumbent worker is defined as “an individual currently employed in an existing non-public business in Oregon.”

Because of the nature of the Dislocated Worker Program funding, the affected incumbent workers trained will be at risk of layoff due to the skill requirements workers need in order for the employer to remain competitive or increase competitiveness.

(5) Processes used to monitor implementation, provide notice to any local board affected by the waiver, provide affected local boards opportunity to comment, and ensure meaningful comment, including comment from business and labor

Monitor the progress in implementing the waiver

The State and Local Area will monitor the process of the waiver through quarterly programmatic and fiscal reviews and reports. Data for the following will be collected and reported:

- Number of program participants;
- Number of program participants who completed training;
- Type of training provided;
- Length of training provided;
- Number of program participants who received a credential or certificate;

- Program participant's wage gain at completion of training and six months after completion; and
- Number of participants whose job classification changed or skills were upgraded.

For LWIBs who request involvement in this waiver, the implementation of incumbent worker training will be included in the annual monitoring carried out by the Department of Community Colleges and Workforce Development.

Provide notice to any local board affected by the waiver

This waiver was originally developed at the request of local boards. The boards, especially those in the WIRED region, wanted the flexibility to provide incumbent worker training using formula funds. For this submission, local boards were advised of the state's intention to request an extension. Local boards were also included in the notification of public review described below.

Ensure meaningful comment, including comment from business and labor

The original waiver submission was supported by an extensive public review process.

For this extension, the draft State Plan Modification underwent a 15-day public review process. The intent of the state to request extension of existing waivers was included in the draft along with a brief explanation of each. A public notice was published in newspapers statewide and the notice was mailed or e-mailed to over 400 individuals and organizations including business and labor organizations. No comments were received.