

The Honorable Deval Patrick  
Office of the Governor  
Massachusetts State House  
Room 280  
Boston, Massachusetts 02133

Dear Governor Patrick:

This letter provides approval of an extension of Massachusetts' current Workforce Investment Act (WIA) and Wagner-Peyser Act (W-P) State Plan and waivers for Program Year (PY) 2010. Training and Employment Guidance Letter (TEGL) No. 21-09, issued on April 15, 2010, provides guidance for states to secure approval of their WIA/W-P State Plans and waivers for PY 2010, and included the option to receive an extension of the existing State Plan and waivers for an additional year without submitting a formal request.

#### Extension of State Plan

Massachusetts' existing State Plan will expire on June 30, 2010. This letter constitutes a written determination under WIA Section 112 (29 USC 2822) that the Employment and Training Administration (ETA) is extending the approval of Massachusetts' State Plan for WIA Title I and the Wagner-Peyser Act for Program Year 2010, July 1, 2010 through June 30, 2011.

The Grant Officer will issue a Notice of Obligation for the "July portion" of the WIA formula allocations for Adult and Dislocated Worker programs, effective July 1, 2010, under the PY 2010 Annual Funding Agreement. The W-P program's Annual Funding Agreement for PY 2010/Fiscal Year 2011 will be sent to the designated state grantee agency for signature and return to the Grant Officer for execution, effective July 1, 2010. The W-P Annual Funding Agreement will provide for the initial base allocation of PY 2010 funds.

#### Performance Levels

Once the final goals are established, the Regional Administrator's letter advising the Commonwealth of the PY 2010 WIA and W-P final performance goals constitutes a modification to the State Plan. ETA will incorporate Massachusetts' final performance goals for PY 2010 into the Regional and National Office copies of the State Plan. Please include these final PY 2010 goals in the Commonwealth's official copy of the State Plan.

## Waivers

As part of Massachusetts' extension of the WIA/W-P State Plan, and as described in TEGL 21-09, ETA has made determinations regarding an extension of Massachusetts's PY 2009 waivers of statutory and regulatory requirements under WIA for PY 2010. The disposition of the Commonwealth's waiver extensions is outlined below. This action is taken under the Secretary's authority at WIA section 189(i) to waive certain requirements of WIA title I, Subtitles B and E, and sections 8-10 of the Wagner-Peyser Act. 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.

### Extension of Waivers

#### 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 Commonwealth was previously granted a waiver to permit an increase in the amount a state is allowed to transfer between the Adult and Dislocated Worker funding streams. The Commonwealth is granted an extension of this waiver through June 30, 2011. 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 Commonwealth 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.

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

The Commonwealth was previously granted 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 Commonwealth is granted an extension of this waiver through June 30, 2011. 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 Commonwealth must use the appropriate program funds for the appropriate WIA-eligible population. The Commonwealth 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.

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

The Commonwealth was previously granted a waiver to permit local areas to conduct allowable statewide activities as defined under WIA section 134(a)(3) with local WIA formula funding, specifically incumbent worker training. The Commonwealth is granted an extension of this waiver through June 30, 2011. Under this waiver, the Commonwealth will be permitted to allow local areas to use up to 10 percent of local Dislocated Worker funds and up to 10 percent of local Adult funds for incumbent worker training only as part of a lay-off aversion strategy. Use of Adult funds must be restricted to serving lower 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), field 309. TEGL No. 26-09, Section 7A, "Workforce Investment Act (WIA) Waiver Policy and Waiver Decisions for PY 2009 and 2010" and TEGL No. 30-09, "Layoff Aversion Definition and the Appropriate Use of Incumbent Worker Training for Layoff Aversion Using a Waiver" provide policy guidance related to implementation of this 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 Commonwealth was previously granted a waiver to permit use of rapid response funds to conduct allowable statewide activities as defined under WIA section 134(a)(3), specifically incumbent worker training. The Commonwealth is granted an extension of this waiver through June 30, 2011. Under this waiver, the Commonwealth is permitted to use up to 10 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 Commonwealth is required to report performance outcomes for any incumbent workers served under this waiver in the WIASRD, field 309. TEGL No. 26-09, Section 7A, "Workforce Investment Act (WIA) Waiver Policy and Waiver Decisions for PY 2009 and 2010" and TEGL No. 30-09, "Layoff Aversion Definition and the Appropriate Use of Incumbent Worker Training for Layoff Aversion Using a Waiver" provide policy guidance related to implementation of this waiver. As stated in ETA Training and Employment Guidance Letter 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.

Waiver of the prohibition at 20 CFR 664.510 on the use of Individual Training Accounts for older and out-of-school youth.

The Commonwealth was previously granted a waiver of the prohibition at 20 CFR 664.510 on the use of Individual Training Accounts (ITAs) for older and out-of-school youth program participants. The Commonwealth is granted an extension of this waiver through June 30, 2011. Under this waiver, the Commonwealth can use ITAs for older and out-of-school youth program participants. The Commonwealth should ensure that funds used for ITAs are tracked and reflected in the individual service strategies for these youth.

Waiver of WIA Section 123 that requires that providers of Youth program elements be selected on a competitive basis.

The Commonwealth was previously granted a waiver of the requirement for competitive procurement of service providers for one of the ten youth program elements: follow-up services. The Commonwealth is granted an extension of this waiver through June 30, 2011. Under this waiver, the Commonwealth is permitted to allow its One-Stop Career Centers or partner agencies to directly provide youth program elements. In utilizing this waiver, the Commonwealth and local areas must still meet Office of Management and Budget requirements (codified in 29 CFR 95.40-95.48 and 97.36) and all state and local procurement laws and policies.

The approved waivers are incorporated by reference into the Commonwealth'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 Commonwealth's WIA Grant Agreement and the approved State Plan. In addition, as required by TEGL No. 14-00, Change 3, the Commonwealth should address the impact these waivers have had on Massachusetts' performance in the WIA annual performance report, due on October 1 of each year.

We look forward to working together as you implement your State Plan for PY 2010. If you have any questions related to the issues discussed above, please contact Christina Eckenroth, the Federal Project Officer for Massachusetts, at (617) 788-0157 or [Eckenroth.Christina@dol.gov](mailto:Eckenroth.Christina@dol.gov).

Sincerely,

Jane Oates  
Assistant Secretary

cc: Joanne F. Goldstein, Secretary, Massachusetts Executive Office of Labor and Workforce Development  
Bernadette O'Malley, Chief of Staff, Massachusetts Executive Office of Labor and Workforce Development  
Michael Taylor, Director of Massachusetts Department of Workforce Development  
Gerald McDonough, Chief Legal Counsel, Massachusetts Executive Office of Labor and Workforce Development  
Robb Smith, Director of Policy and Planning, Massachusetts Executive Office of Labor and Workforce Development  
Holly O'Brien, Regional Administrator, ETA Boston Regional Office  
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