

The Honorable Charlie Crist
Governor of Florida
State Capitol Building
Tallahassee, Florida 32399-0001

Dear Governor Crist:

This letter provides approval of an extension of Florida's current Workforce Investment Act (WIA) and Wagner-Peyser Act (W-P) State Plan and waivers for Program Year (PY) 2010. This letter also responds to Florida's request(s) for new and extended waivers.

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

Florida's 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 Florida's 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 programs 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

Florida has decided to extend its existing PY 2009 WIA and W-P performance goals for PY 2010. ETA has incorporated these performance goals, identified as PY 2010 performance goals, into the Regional and National Office copies of the State Plan. Please include these PY 2010 goals in the State's official copy of the State Plan.

Waivers

As part of the State's extension of the WIA/W-P State Plan, and as described in TEGL 21-09, ETA has made determinations regarding an extension of Florida's PY 2009

waivers of statutory and regulatory requirements under WIA for PY 2010. The State also submitted requests for new waivers (copy enclosed). The State's request for new waivers is written in the format identified in WIA section 189(i)(4)(B) and 20 CFR 661.420(c). The disposition of the State's waiver extensions as well as its submission of new waiver requests 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 (Recovery Act).

Extension of Waivers

Waiver Extension: Waiver to permit the State to replace the performance measures at WIA Section 136(b) with the common measures.

The State was previously granted a waiver that allows the State to replace the 17 performance measures under WIA Section 136(b) with the common measures. The State is granted an extension of this waiver through June 30, 2011.

This waiver permits the State to negotiate and report WIA outcomes against the common performance measures only, rather than the performance measures described at WIA Section 136(b). The State will no longer negotiate and report to ETA on the following WIA measures: WIA adult and dislocated worker credential rates; participant and employer customer satisfaction; older youth measures; and younger youth measures. The State will use the three adult common performance measures to negotiate goals and report outcomes for the WIA Adult and WIA Dislocated Worker programs. The State will use the three youth common performance measures to negotiate goals and report outcomes for the WIA Youth program. Workforce Investment Act Standardized Record Data system (WIASRD) item 619, Type of Recognized Credential, should be completed for each individual as appropriate, regardless of this waiver to report on common performance measure outcomes only.

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

The State 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 State is granted an extension of this waiver through June 30, 2011. Under this waiver, the State can use ITAs for older and out-of-school youth program participants. The State should ensure that funds used for ITAs are tracked and reflected in the individual service strategies for these youth.

Waiver Extension: 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 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 State asked that the transfer authority limit be increased to 100 percent for PY 2010. The State is granted an extension of its PY 2009 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 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.

Waiver Extension: 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 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 State asked that limitations imposed on this waiver in PY 2009 be lifted for PY 2010. The State is granted an extension of its PY 2009 waiver through June 30, 2011. 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), 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 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.

ETA denies the portion of the State's request to permit use of rapid response funds to conduct allowable statewide activities as defined under WIA section 134(a)(3). ETA believes that rapid response funds should only be used to enhance services provided to dislocated workers including placement in employment, training, or provision of supportive services. The State's request did not specifically describe the activities it intends to carry out with rapid response funds in PY 2010, and thus fell outside these parameters. Should the State wish to describe the specific activities it will conduct with Rapid Response funds in PY 2010, ETA will be glad to reconsider the request.

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

The State 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. For PY 2010, the State requested that the portion of funds to be used for incumbent worker training be increased to 20 percent each for local Adult and Dislocated Worker funds, and that limitations imposed on the waiver in PY 2009 be removed. The State is granted an extension of its PY 2009 waiver through June 30, 2011. Under this waiver, the State 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 Extension: Waiver of 20 CFR 666 and 667.300(a) to reduce the collection of participant data for incumbent workers.

The State was previously granted a waiver of the requirements to reduce the data collection burden for employers participating in WIA-funded incumbent worker training programs. The waiver permits the State to discontinue the collection of the following Workforce Investment Act Standardized Record Data (WIASRD) elements: single parent (117), unemployment compensation eligible status at participation (118), low income (119), TANF (120), other public assistance (121), homeless individual and/or runaway (125), and offender (126). The State is granted an extension of this waiver through June 30, 2011.

Waiver Extension: Waiver of WIA Section 101(31)(B) to increase the employer reimbursement for on-the-job training.

The State was previously granted a waiver to permit an increase in employer reimbursement for on-the-job training through a sliding scale based on the size of the business. The State is granted an extension of this waiver through June 30, 2011. Under the waiver, the following reimbursement amounts will be permitted: 1) up to 90 percent for employers with 50 or fewer employees, and 2) up to 75 percent for employers with 51-250 employees. For employers with more than 250 employees, the current statutory requirements (50 percent reimbursement) will continue to apply. When determining the

funding source for on-the-job training, the State must use the appropriate program funds for the appropriate WIA-eligible population. The State may provide on-the-job training to low-income adults with WIA Adult funds, and may provide on-the-job training to dislocated workers with WIA Dislocated Worker funds. On-the-job training provided with statewide funds must serve WIA eligible individuals.

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

The State 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 State 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 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.

Waiver Extension: Waiver of WIA regulations 20 CFR 662.240(b)(10) to allow One-Stop Career Center staff to perform intake and eligibility determination for additional programs.

The State was previously granted a waiver of 20 CFR 662.240(b)(10). The waiver permits the State to include three supportive workforce programs cited by the State: Temporary Assistance for Needy Families (TANF), Food Stamp Employment and Training (FSET), and Medicaid programs in the list of services specified in 20 CFR 662.240(b)(10). Under the waiver, intake and eligibility determination for these programs are considered to be WIA core services and can be paid for with WIA funds. The State is granted an extension of this waiver through June 30, 2011.

New Waiver Requests

Requested Waiver: Waiver of the reallocation provisions at WIA Sections 128(c)(2) and 133(c)(2), and 20 CFR 667.160.

The State is requesting a waiver of the reallocation provisions at WIA Sections 128(c)(2) and 133(c)(2), and 20 CFR 667.160. ETA denies this waiver. ETA believes that maintaining the statutory provisions of the law ensures that local areas have sufficient time to obligate and expend funds in a manner that best supports the needs of the customers in that area.

Requested Waiver: Waiver of WIA regulations at 20 CFR 666.300 to allow entrepreneurial training to be provided through state-level grants and local formula dollars with performance tracked and aggregated at the state level, but not included in local performance calculations.

The State indicates that requiring the collection and reporting of performance information on entrepreneurial trainees at the local level discourages local boards from investing in this type of training. This request does not meet the higher standard for waiving the key WIA reform principle of increased accountability at 20 CFR 661.410(c), and therefore, will not be approved. ETA has provided a considerable amount of flexibility in the use of funds to support self-employment options for WIA participants. We believe this flexibility offers ample incentive for local areas to invest in entrepreneurial training. We are unwilling to waive the collection of local performance information for states because we believe it is essential for effective program management and performance accountability. Note that the State has the authority to report additional alternative performance measures that may reflect the outcomes of entrepreneurial trainees.

Requested Waiver: Waiver of WIA Section 181(e) to permit the use of WIA funds of up to \$5,000 to capitalize a small business in concert with entrepreneurial or small business training.

The State is requesting a waiver of WIA Section 181(e) to permit the use of WIA funds of up to \$5,000 to capitalize a small business in concert with entrepreneurial or small business training. ETA denies this waiver. Entrepreneurship is important to job creation, however business capitalization is best supported by organizations and agencies whose mission and statutory authority directly relate to business development.

Requested Waiver: Waiver of WIA regulation 20 CFR 663.820 and 825 requiring that needs related payments only be provided to adults and dislocated workers who do not qualify for, or have ceased qualifying for, unemployment compensation.

Provisions related to eligibility of providers and participants are excluded from the WIA waiver authority, and cannot be waived. Therefore, we are denying this waiver.

Requested Waiver: Waiver at WIA Section 195(10) and 20 CFR 667.264(a)(2) on the prohibition on the use of WIA funds for public service employment.

The State has requested a waiver of the provisions that prohibit the use of WIA funds for public service employment to augment with WIA funds a subsidized employment initiative which uses Temporary Aid to Needy Families (TANF) funding. ETA does not approve a waiver to allow the use of WIA funds for a public service employment initiative primarily funded by TANF. Public service employment would constitute a dramatic shift from Congressional intention for the use of WIA formula funds, and TANF funds are already available for the purpose of creating subsidized jobs to those most severely affected by the economic downturn.

The State has also requested a waiver within its National Emergency Grant (NEG) application to use NEG funds for public service employment related to oil spill clean efforts. ETA is not able to provide a final response at this time. ETA Regional Office staff has requested additional information from the State, and a final response to that waiver request will be provided after receipt of that information.

Requested Waiver: Waiver of the requirement under WIA section 123 and 20 CFR 664.610 regarding competitive selection of providers of youth activities.

The State has requested a waiver of the requirements under WIA section 123 and 20 CFR 664.610, stating that providers of summer youth employment opportunities must be selected by awarding a grant or contract on a competitive basis. ETA denies this waiver. As described in TEGL No. 26-09, although ETA approved this waiver for summer of 2009 after passage of the Recovery Act in order to facilitate rapid implementation of summer 2009 summer youth activities with Recovery Act funds, ETA will not approve this waiver for summer 2010. States have had adequate time to plan for and competitively procure summer youth employment activities for summer 2010.

Requested Waiver: Waiver of performance measures for youth participants in summer youth employment activities.

The State has requested a waiver of the common performance measures for youth who participate in subsidized summer youth employment activities funded with WIA Youth formula funds or Recovery Act funds. The State does not need a waiver in order to use the work readiness indicator as the only indicator of performance for youth activities funded with Recovery Act funds. As described in TEGL No. 26-09, the flexibility and requirements described in TEGL No. 14-08, Section 16, apply. ETA denies the State's request to use the work readiness indicator as the only indicator of performance for youth activities funded with WIA formula funds. The focus of WIA formula funds should be to provide the comprehensive youth services described in 20 CFR 664.410. The State should report all youth common measures for WIA formula youth program participants enrolled in summer employment opportunities.

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 working together as you implement your State Plan for PY 2010. If you have any questions related to the issues discussed above, please contact Helen Parker, the ETA Atlanta Regional Administrator, at 404-302-5300 or Parker.Helen@dol.gov.

Sincerely,

Jane Oates
Assistant Secretary

Enclosure

cc: Chris Hart, IV, President and CEO, Workforce Florida, Inc.
Cynthia Lorenzo, Director, Agency for Workforce Innovation
Janet Sten, Federal Coordinator for Plan Review and Approval
Thomas Martin, Grant Officer
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