

The Honorable Mitchell E. Daniels, Jr.  
Governor of Indiana  
206 State House  
Indianapolis, Indiana 46204

Dear Governor Daniels:

This letter responds to your letter dated May 24, 2010 in which you request approval of the modification to Indiana's State Plan for Title I of the Workforce Investment Act (WIA) and the Wagner-Peyser Act for the period July 1, 2010 through June 30, 2011, submit new requests for waivers, and request an extension of Indiana's current waivers through June 30, 2011. The Employment and Training Administration (ETA) received the State's proposed modification and request for extension of waivers on June 1, 2010.

Training and Employment Guidance Letter (TEGL) No. 21-09, issued on April 15, 2010, provides guidance for states that choose to submit a modification of the existing State Plan for PY 2010. We appreciate the State's responsiveness to this guidance.

#### Plan Review and Approval

ETA has reviewed the Indiana State Plan modification in accordance with Title I of WIA, the Wagner-Peyser Act, the corresponding regulations, the WIA/W-P Planning Guidance (73 Fed. Reg. 72853, December 1, 2008), and as appropriate Attachment A of TEGL 14-08. Pursuant to 20 CFR 661.230(e), this letter constitutes a written determination under WIA Section 112 (29 USC 2822) that ETA cannot approve the modification to Indiana's State Plan for the period July 1, 2010 through June 30, 2011, without additional information and clarification. ETA is extending the approval of Indiana's Program Year (PY) 2009 State Plan through August 30, 2010.

The enclosure sets forth the areas of concern that Indiana must address. Indiana must provide the additional information and clarification described in the enclosure in a revised modification and this revised modification must be submitted to ETA by July 30, 2010. The revised modification should be sent to Janet Sten, the Federal Coordinator for Plan Review and Approval, at [WIA.PLAN@DOL.GOV](mailto:WIA.PLAN@DOL.GOV), with a copy to Byron Zuidema, the Regional Administrator for Region V. ETA will provide notice of its determination upon review of the revised State Plan modification on or before August 30, 2010.

Prior to submission of the revised modification to ETA, Indiana should conduct vigorous outreach to gain the input of and ensure meaningful opportunity for public comment by representatives of business and labor, and chief elected officials. Indiana must provide at a later date, but no later than August 25, the outcome of the State's review of the public comments received.

The Grant Officer will issue a Notice of Obligation for the initial 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

Indiana 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 Indiana's modification of the WIA/W-P State Plan, and as described in TEGL 21-09, ETA has made determinations regarding an extension of Indiana's PY 2009 waivers of statutory and regulatory requirements under WIA for PY 2010. The State also submitted a request 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.

ETA is only approving the waivers that follow, with the exception of the waiver related to summer youth flexibility, until August 30, 2010. The State does not need to submit an additional request to continue approval of the waivers through all of PY 2010; ETA will assume the State wishes to extend the waivers. Upon approval of the revised State Plan modification, the waivers approved with

the modified Plan will take effect and the waivers extended in this letter will terminate.

#### Extension of Waivers

##### 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 August 30, 2010.

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

The State was previously granted a waiver of the time limit on the period of initial eligibility of training providers provided at 20 CFR 663.530. The State granted an extension of this waiver through August 30, 2010. Under the waiver, the State is allowed to postpone the determination of subsequent eligibility of training providers. The waiver also allows the State to provide an opportunity for training providers to re-enroll and be considered enrolled as initially eligible providers.

##### 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 August 30, 2010. 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 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 is granted an extension of this waiver through August 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 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 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 is granted an extension of this waiver through August 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), 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.

Application of WIA regulations at 20 CFR 661.300(f) to allow the state board to carry out the roles of a local board.

The State was previously granted a waiver to permit the state to apply 20 CFR 661.300(f) to the statewide regional planning area described in its State Plan. This provision allows states that operate as a single local workforce investment area to use the state workforce investment board to carry out the requirements of the local workforce investment board. To allow additional time to transition to a fully WIA-compliant local board and to allow revision of the Plan modification, we are extending this waiver through August 30, 2010.

Under the waiver, the Governor may designate the State Board to carry out the roles and responsibilities of the local board in the designated region encompassing the state, in the same manner as permitted in single service delivery area states. This waiver will not be extended beyond August 30, 2010.

New Waiver Requests

Requested Waiver: Waiver of performance measures for youth who participate in work experience only.

The State has requested a waiver of the common performance measures for out-of-school youth ages 18 to 24 who participate in work experience that occurs outside of the summer months.

When submitting a plan to request this waiver, the State must provide a justification for the waiver and address continued service plans for participants served under the waiver, such as transition to the WIA Adult program (i.e., co-enrollment in WIA Adult services) or further education and training activities under WIA or Recovery Act-funded youth services. See TEGL No. 14-08, Section 19, issued by ETA on March 18, 2009.

The State's written request meets the ETA requirements outlined above. The requested waiver is approved and allows the State to use the work readiness indicator as the only indicator of performance for such youth. The waiver only applies to youth served through WIA Youth program funds made available through the American Recovery and Reinvestment Act of 2009. The waiver is only applicable from October 1, 2009 through October 23, 2010.

In recognition that many older and out-of-school youth need supportive services to enable them to participate in work experience, this waiver can be applied to

out-of-school youth ages 18 to 24 that receive supportive services in addition to participating in work experience. The waiver would not apply to such youth participating in other WIA youth program elements.

Requested Waiver: Waiver of certain provisions under WIA section 129 and 20 CFR 664 to provide program design flexibility in serving youth who participate in work experience only.

The State has requested a waiver of certain provisions under WIA section 129 and 20 CFR 664, requiring the design framework of youth local programs to include 10 elements for improving the educational and skill competencies of its participants. Through this waiver, the State will be able to provide program design flexibility in serving out-of-school youth ages 18 to 24 who only participate in work experience that occurs outside of the summer months.

When submitting a plan to request this waiver, the State must provide a justification for the waiver and address continued service plans for participants served under the waiver, such as transition to the WIA Adult program (i.e., co-enrollment in WIA Adult services) or further education and training activities under WIA or Recovery Act-funded youth services. See TEGL No. 14-08, Section 19, issued by ETA on March 18, 2009.

The State's written request meets the ETA requirements outlined above. The State's waiver request is approved. Specifically, the State is granted a waiver of statutory and regulatory provisions as follows:

- Waiver of the requirement at WIA section 129(c)(2)(I) and 20 CFR 664.450(b) to provide a minimum of 12 months of follow-up services, to allow local areas to provide follow-up services with Recovery Act funds as deemed appropriate for such youth participants.
- Waiver of the requirement at WIA section 129(c)(1)(A) and 20 CFR 664.405(a)(1) to provide an objective assessment and the requirement at WIA section 129(c)(1)(B) and 20 CFR 664.405(a)(2) to develop an individual service strategy (ISS), to allow local areas to provide an assessment or ISS as deemed appropriate for such youth participants.

This waiver only applies to youth participants served through WIA Youth program funds made available through the American Recovery and Reinvestment Act of 2009. The waiver is only applicable from October 1, 2009 through October 23, 2010.

In recognition that many older and out-of-school youth need supportive services

to enable them to participate in work experience, this waiver can be applied to out-of-school youth ages 18 to 24 that receive supportive services in addition to participating in work experience. The waiver would not apply to such youth participating in other WIA youth program elements.

The State also requested flexibility in providing academic remediation. Please note there are no statutory or regulatory requirements to provide academic remediation. The State may reference TEGL No. 14-08, Section 16, which describes the program design flexibility available for Recovery Act funded summer youth programs. The approval of this waiver provides for the same program design flexibility described in that TEGL beyond the summer months.

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.

If you have any questions related to the issues discussed above, please contact Stacy O'Keefe, the Federal Project Officer for Indiana, at 312-596-5527 or [Okeefe.stacy@dol.gov](mailto:Okeefe.stacy@dol.gov).

Sincerely,

Jane Oates  
Assistant Secretary

Enclosure

cc: Mark W. Everson, Commissioner, Indiana Department of Workforce Development  
Gina DelSanto, Senior Deputy Commissioner of Policy and Performance  
Byron Zuidema, Regional Administrator, ETA Chicago Regional Office  
Janet Sten, Federal Coordinator for Plan Review and Approval  
Thomas Martin, Grant Officer  
Stacy O'Keefe, Federal Project Officer for Indiana