



AUG 19 2010

The Honorable Bobby Jindal  
Governor of Louisiana  
State Capitol Building  
Post Office Box 94009  
Baton Rouge, Louisiana 70804

Dear Governor Jindal:

We are pleased to be able to respond to your request for waivers of statutory and regulatory requirements under the Workforce Investment Act (WIA). 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 request is written in the format identified in WIA section 189(i)(4)(B) and 20 CFR 661.420(c), and appears to meet the standard for approval at 20 CFR 661.420(e).

Louisiana is seeking four waivers, and has asked that these waivers apply to its National Emergency Grant (NEG) for the Gulf oil spill (EM-20647-10-60-A-22.) The following is the disposition of the State's submission (copy enclosed).

**Requested Waiver: 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 (OJT) through a sliding scale based on the size of the business, as part of the State's extension of its WIA/Wagner-Peyser Act State Plan modification for Program Year 2010. Per the State's request, the Employment and Training Administration (ETA) is now granting approval to apply this waiver to NEG EM-20647-10-60-A-22 through a grant modification. Under the waiver, the following reimbursement amounts will be permitted for dislocated workers served with NEG funds: 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.

**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. ETA does not negotiate with, nor hold accountable, individual local areas. States are responsible for negotiating performance levels with their local areas, and must balance varying performance across local areas so that the State's targets can be achieved. A State can choose to negotiate a lower performance goal with one local area that is pursuing entrepreneurship and negotiate a higher goal with another local area to ensure that the State's goal is met. The State may also wish to consider renegotiating its performance goals with ETA's Region IV office, a process outlined in Training and Employment Guidance Letter (TEGL) No. 23-09, "Negotiating Performance Goals for the Workforce Investment Act Title 1B Programs and Wagner-Peyser Act Funded Activities for Program Year 2010."

The State must still include information on participation and outcomes for entrepreneurial training participants in the Workforce Investment Act Standardized Record Data (WIASRD) system. Such information is essential for effective program management and performance accountability. Although the State may choose to allow a local area to exclude a certain group of participants from their local performance, all individuals must be reported through the WIASRD at the state level. 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 has requested the ability to provide up to \$5,000 for business capitalization to individuals who have completed entrepreneurial or microenterprise training. ETA is now granting approval to apply this waiver to NEG EM-20647-10-60-A-22 through a grant modification. This waiver permits the use of NEG funds of up to \$5,000 to capitalize a small business in concert with entrepreneurial or small business training for the individual benefiting from the capitalization, within certain parameters. The following conditions apply to the use of funds for small business capitalization under this waiver:

1. Grant assistance must be limited to no more than \$5,000 per individual/business.

2. Entrepreneurial and micro-enterprise training is permitted without the use of a waiver (WIA 134 (d)(4)(D)(vi).)
3. Use of funds to cover salaries is not permitted.
4. Use of funds for business capitalization revolving loans is not permitted.
5. The use of the NEG for business capitalization is limited to no more than 25 percent of the NEG funds provided to the State under NEG EM-20647-10-60-A-22.
6. The State is required to obtain and document the receipt of legitimate estimates for expenses prior to disbursing funds. The State also must require receipts after the item/service is provided, to ensure that the actual cost of the good/service is not less than the estimate.
7. The State must have sufficient financial systems in place to track funds dispersed under this business capitalization waiver, as well as the ability to recapture funds that were not used by eligible businesses in instances where the final receipt is less than the original estimate.
8. The policy developed by the State to implement this waiver must be consistent with the conditions outlined in this letter.
9. Applications for business capitalization must be approved by the State in accordance with criteria developed by the State that are consistent with the conditions contained in this letter. The applications must be reviewed by a committee prior to approval to ensure rigor and consistency in the handling of business capitalization requests.
10. The State is required to monitor local implementation of this waiver.

In addition, other sources of Federal law and regulations place restrictions on the use of Federal funds, including WIA funds, for activities related to business capitalization, such as appropriations law; Office of Management and Budget (OMB) Cost Principles for State, Local, and Indian Tribal Governments set forth at 2 CFR 225 (also known as OMB Circular A-87); and the Federal Acquisitions Regulations (FAR) set forth at 48 CFR 31. As with all WIA waivers, ETA does not have the authority to waive provisions in appropriations laws, OMB Cost Principles, or the FAR.

#### Unallowable Costs with a Waiver

The following uses of funds are not allowable under a waiver of WIA section 181(e):

- Research and development activities. (FAR 31.205-48; FAR 31.205-18.)
- Software costs (unless the software is used in training, as described in the “Allowable Costs Without a Waiver” section below.)
- Cost of purchasing inventory for the business. (FAR 31.205-26(d); 2 CFR 225 15(4)(b)(1).)
- Costs associated with the purchase of space for the business. (20 CFR 667.260.)
- Employee wages. (FAR 31.205-6.)
- Costs of licenses and fees associated with starting a new business. (FAR 31.205-27.)

If the State is considering activities that are not specifically addressed as either allowable or unallowable costs in this letter, then the State should consult with ETA on those activities.

### Allowable Costs Without a Waiver

The State may find it useful to be aware of activities that can assist entrepreneurs and small businesses and are allowable under WIA, with or without a waiver of section 181(e):

- *Entrepreneurial Training.* WIA funds may be used for training for new entrepreneurs and small business owners, which can range from general business courses to specific courses on such topics as how to address legal and personnel issues. (Further information on entrepreneurial training will be provided in a forthcoming Training and Employment Guidance Letter.)
- *Skills Training.* WIA funds may be used for skills training for potential employees and customized training for incumbent workers. WIA requires employers to pay for not less than 50 percent of the cost of customized training. (States may request a waiver of the required 50 percent employer match for customized training to permit a sliding scale to reduce the match for small businesses.) Small businesses can also arrange OJT with One-Stop Career Centers. WIA allows businesses to receive reimbursement of up to 50 percent of the wage rate to compensate for the costs associated with OJT, with the business incurring the remainder of the costs.
- *Recruitment and Hiring.* Posting jobs, recruiting workers, conducting interviews, and screenings applicants are business services that are regularly offered by One-Stop Career Centers and can be provided to small businesses.
- *Credentials.* WIA funds can be used to pay costs associated with obtaining a skill or occupational credential that demonstrates the expertise of the entrepreneur or

small business owner. Examples include a barbering credential, certified pension consultant, title examiner, or notary.

- *Website Development.* A One-Stop Career Center can, directly or through a contract, provide a small business with assistance in developing a Web site using WIA funds. This assistance must focus on either training the small business on Web site development, or developing the new Web site for the small business. WIA funds cannot be used for maintenance or operation of the Web site.
- *A Portion of Equipment, Software, and Computer Costs.* Equipment, software, and computer costs are all treated differently under the OMB Cost Principle Circulars on allowable costs. Although WIA funds cannot be used to purchase equipment or other capital assets, software, or computers for the sole use of the small business's commercial operation, if they are purchased by the business and used to provide training to eligible program participants, the business can charge a user fee to the grant as follows:
  - *Equipment* (acquisition cost of \$5,000 or more with a useful life of more than one year.) For capital assets such as equipment, a use allowance fee may be charged to the grant for the time the equipment is used for training. The fee is capped at 6 and 2/3 percent of acquisition cost on a yearly basis and may only be charged proportionate to the time the assets are used in training. (See 20 CFR 225 (OMB Circular A-87) Appendix B, Item 11 for a more detailed description of depreciation and use allowance costs and their application to Federal grant projects.)
  - *Software.* Software is not considered a fixed asset under the allowable cost principles. For software costs, a proportionate share of the annual licensing agreement fee or other such costs associated with the use of the software may be charged to the grant based on the amount of time the software is used for training.
  - *Computers.* Computers are considered to be either supplies or equipment based solely on the purchase price and definition under allowable cost principles. (Computers are considered to be supplies if they are personal property other than equipment and cost less than \$5,000 per unit). As such, a proportional share of the cost may be charged to the grant for the time the computer is used for training.

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

ETA is not able to provide a final determination on this waiver request at this time. Staff from ETA's Region IV are in contact with the State to obtain further information about your request. Please note that hiring additional One-Stop Career Center workers

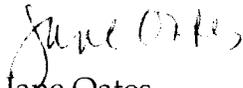
to support the provision of services to oil-spill affected workers does not require a waiver and is an allowable cost under part of the purpose of the NEG.

The terms and conditions of NEG EM-20647-10-60-A-22 will be updated to formally incorporate the application of the approved WIA waivers into the grant.

We are prepared to entertain other state and local level waiver requests that you may wish to submit, consistent with the provisions of the WIA statute and regulations.

We hope that these waivers will be of use to you in the state's recovery. If you have any questions related to the issues discussed above, please contact Marilyn Brandenburg, Federal Project Officer for Louisiana, at (972) 850-4617 or [Brandenburg.Marilyn@dol.gov](mailto:Brandenburg.Marilyn@dol.gov).

Sincerely,

  
Jane Oates  
Assistant Secretary

Enclosure

cc: Marilyn Brandenburg, Federal Project Officer for Louisiana, ETA Dallas Regional Office