



JUN 21 2011

The Honorable Steven L. Beshear  
Governor of Kentucky  
The Capitol Building  
700 Capitol Avenue, Suite 100  
Frankfort, Kentucky 40601

Dear Governor Beshear:

This letter provides approval of the modification to Kentucky's State Plan for Title I of the Workforce Investment Act (WIA) and the Wagner-Peyser Act (W-P) for the period July 1, 2011 through June 30, 2012, Program Year (PY) 2011. The Employment and Training Administration (ETA) received the Commonwealth's proposed modification on April 15, 2011. This letter also provides approval of extensions for Kentucky's waivers.

Training and Employment Guidance Letter (TEGL) No. 17-10, issued on December 30, 2010, provides guidance for states that choose to submit a modification of the existing State Plan or submit requests for new waivers. We appreciate the Commonwealth's responsiveness to this guidance.

#### Plan Review and Approval

ETA has reviewed the Kentucky 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 TEGL No. 17-10. Pursuant to 20 CFR 661.230(e), this letter constitutes a written determination under WIA Section 112 (29 USC 2822) that ETA is approving the modification to Kentucky's State Plan for the period July 1, 2011 through June 30, 2012. The Commonwealth has already received its formula allotment for the WIA Youth program for PY 2011. The Commonwealth is eligible to receive WIA formula allotments for Adult and Dislocated Worker programs and W-P initial base program allotments, effective July 1, 2011, under the PY 2011 annual funding agreement for WIA and the PY 2011/Fiscal Year 2012 annual funding agreement for W-P.

#### Performance Levels

Kentucky requested to extend its existing PY 2010 WIA and W-P performance goals for PY 2011. ETA has incorporated these performance goals, identified as PY 2011 performance goals, into the Regional and National Office copies of the State Plan. Please include these PY 2011 goals in the official copy of the State Plan.

## Waivers

As part of Kentucky's modification of the WIA/W-P State Plan, and as described in TEGL No. 17-10, the Commonwealth requested extensions of Kentucky's PY 2010 waivers of statutory and regulatory requirements under WIA for PY 2011. 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.

### 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, 2012. 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.

### Waiver to permit a state to replace the performance measures at WIA Section 136(b) with the common measures.

The Commonwealth was previously granted a waiver that allows it to replace the 17 performance measures under WIA Section 136(b) with the common measures. The Commonwealth is granted an extension of this waiver through June 30, 2012.

This waiver permits the Commonwealth to negotiate and report WIA outcomes against the common performance measures only, rather than the performance measures described at WIA Section 136(b). The Commonwealth 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 Commonwealth will use the three adult common performance measures to negotiate goals and report outcomes for the WIA Adult and WIA Dislocated Worker programs. The Commonwealth 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 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, 2012. 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 and local area may provide customized training to individuals over age 18 with WIA Adult funds and must provide priority to low-income individuals when funds are limited; the Commonwealth and local area 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 the provision at 20 CFR 663.530 that prescribes a time limit on the period of initial eligibility for training providers.

The Commonwealth 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 Commonwealth is granted an extension of this waiver through June 30, 2012. Under the waiver, the Commonwealth is allowed to postpone the determination of subsequent eligibility of training providers. The waiver also allows the Commonwealth to provide an opportunity for training providers to re-enroll and be considered enrolled as initially eligible providers.

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

The Commonwealth 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 Commonwealth is granted an extension of this waiver through June 30, 2012. 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 Commonwealth must use the appropriate program funds for the appropriate WIA-eligible population. The Commonwealth and local area may provide on-the-job training to individuals over age

18 with WIA Adult funds and must provide priority to low-income individuals when funds are limited; the Commonwealth and local area 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 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, 2012. Under this waiver, the Commonwealth is permitted to allow local areas to use up to 10 percent of local Adult funds for incumbent worker training to serve lower income adults 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 Commonwealth is required to report performance outcomes for any individual 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.

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, 2012. Under this waiver, the Commonwealth 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 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.

Waiver of 20 CFR 666 and 667.300(a) to reduce the collection of participant data for incumbent workers.

The Commonwealth 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 Commonwealth to discontinue the collection of the following 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 Commonwealth is granted an extension of this waiver through June 30, 2012.

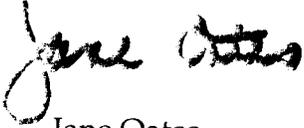
Waiver of the prohibition at 20 CFR 664.510 on the use of Individual Training Accounts for older and out-of-school youth.

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 youth and out-of-school youth program participants. The Commonwealth is granted an extension of this waiver through June 30, 2012. Under this waiver, the Commonwealth can use ITAs for older youth and out-of-school youth program participants. The Commonwealth must continue to make the 10 youth program elements available as described at WIA Section 129(c)(2). The Commonwealth should ensure that funds used for ITAs are tracked and that the ITAs are reflected in the individual service strategies for these youth.

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 WIA Grant Agreement and the approved State Plan. In addition, as described in TEGL No. 09-10, page 3, the Commonwealth should address the impact these waivers have had on the Commonwealth'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 WIA/W-F State Plan for PY 2011. If you have any questions related to the issues discussed above, please contact Claudine Noel, the Federal Project Officer for Kentucky, at (404) 302-5324 and Noel.Claudine@dol.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Jane Oates". The signature is written in a cursive style with a large initial "J".

Jane Oates  
Assistant Secretary

Enclosure

cc: Helen Parker, Regional Administrator, ETA Atlanta Regional Office  
Claudine Noel, Federal Project Officer for Kentucky

ATTACHMENT G – WAIVER EXTENSION REQUEST  
(See Section V of State Plan-pages 69-71)

**Kentucky requests the continuance of the following previously approved waivers.**

1. **Waiver of WIA Section 133(b)(4) and WIA Regulations §667.140 to increase the allowable transfer amount between adult and dislocated worker funding streams allocated to a local area.**

Local boards have the option to continue to transfer up to 50 percent of a program year allocation for adult employment and training activities and up to 50 percent of a program year allocation for dislocated worker employment and training activities between the two programs.

The waiver will provide LWIBs the continued ability to better respond to changes in the economic environment and the local labor market. The only programmatic impact will be the flexibility to channel resources to the population with the greatest need at that time.

2. **Waiver of WIA Section 133(b)(2)(B) to be expended on incumbent worker training activities pursuant to the rules adherent to statewide activities described by WIA Section 134(a)(3).** These funds will be connected to layoff aversion activities.

With the increasing global competitiveness, it is imperative that businesses and industries have the most skilled and knowledgeable employees. With skill upgrading, businesses will be able to remain viable and prevent layoffs and closures. With this waiver, Kentucky will be able to strengthen the regional economy and retain and train the current workforce. Creating more flexibility within WIA regulations through this waiver is critical to meeting Kentucky's goals related to layoff aversion, skill enhancement and business services.

3. **Waiver of WIA Section 134(a)(1)(A) and WIA Regulations 20 CFR 665.310 through 20 CFR 665.330 to permit a portion of the funds reserved for rapid response activities to be used for incumbent worker training.** Allow up to 20 percent of Rapid Response funds to be shifted, as needed, to local workforce investment areas for the purpose of providing incumbent worker training.

This waiver promotes maximum investment of available funds as well as increases levels of service. It focuses on employer and worker layoff aversion and competitiveness through skills upgrade training, therefore, strengthening regional economies and promoting flexibility of local workforce investment areas to further expand incumbent worker activities.

4. **Waiver of 20CFR 666 and 667.300(a) to reduce the collection of participant data for incumbent workers.** Permit the commonwealth to discontinue the

ATTACHMENT G – WAIVER EXTENSION REQUEST  
(See Section V of State Plan-pages 69-71)

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). Under the waiver, the commonwealth will continue to collect and report information on incumbent workers trained with local WIA dislocated worker funds and rapid response funds awarded to local areas for layoff averted, in the WIASRD Section II, Program Activities and Services Information, and Section III, Program Outcomes Information, to account for the use of funds.

The goal of this waiver is to minimize the data capture requirements impacting skills upgrade training programs through incumbent worker training so that employers are not unnecessarily burdened with federal data collection requirements that do not provide relevant program information. The goal is to simplify the process of serving businesses and industries and incumbent workers. Expected program outcomes include allowing local area flexibility to offer incumbent worker services and enhancing services to businesses along with increasing flexibility to engage and work with businesses in improving skills of the employer's workforce. Additionally, eliminating the requirement to capture information that does not impact program outcome, this waiver will allow local areas to timely assist employers in averting layoffs and improving employer customer satisfaction.

5. **Waiver of WIA Section 101(31)(B) to increase the employer reimbursement for on-the-job training (OJT).** WIA would reimburse up to 90 percent to employers with 50 or fewer employees and up to 75 percent of the costs for employers with 51-250 employees. Businesses with more than 250 employees would be reimbursed at the 50 percent rate.

Employers, WIA customers and job seekers will be positively affected through this waiver. Kentucky's smaller employers will benefit due to the increased reimbursement rate. The time the employer has to devote to the OJT employee, will make them more valuable to present and future employers. As more employers are able to access OJT training, it will provide training to more adults and dislocated workers eligible for services under WIA.

6. **Waiver of the required 50 percent employer contribution for customized training at WIA Section 101(8)(C).** Through this waiver, the employer match would range from a minimum of 10 percent to a maximum of 50 percent, based on the employer's size. Specifically, Kentucky shall establish the required portion of the costs, which shall not be less than 10 percent of the costs for employers with 50 or fewer employees and not less than 25 percent of the costs for employers with 51-250 employees. Businesses with more than 250 employees would be charged the 50 percent rate.

ATTACHMENT G – WAIVER EXTENSION REQUEST  
(See Section V of State Plan-pages 69-71)

The proposed sliding scale for the employer contribution will create the necessary flexibility for employers to provide the required contribution at a rate that more appropriately fits the small-employer budget. Local areas will be able to more effectively market WIA-funded customized training services to the private sector in support of building relations with employers in high-demand, high-growth industries.

7. **Waiver to permit the commonwealth to replace the performance measures at WIA Section 136(b) with the common measures.** The waiver facilitates system integration and streamlines the reporting process across partner programs.
8. **Waiver of the prohibition at 20CFR 664.510 on the use of Individual Training Accounts for older and out-of-school youth to utilize Individual Training Accounts (ITAs) for Older Youth program participants.** The waiver allows for continued flexibility in using youth funds to provide training services to youth, while retaining the limited adult funds to be used for adult training services. The waiver has increased efficiency and customer choice for older youth. Additionally, the waiver has enhanced the efficiency and ease in tracking of funds for each funding stream.
9. **Waiver of the provision at 20 CFR 663.530 that prescribes a time limit on the period of initial eligibility for training providers.** The waiver has allowed training providers to offer continuous, uninterrupted service to WIA customers. WIA customers continue to have the ability to choose their training providers and access training services in their local areas with the highest degree of informed customer choice possible.