



APR 18 2012

The Honorable Phil Bryant
Governor of Mississippi
State Capitol Building
P.O. Box 139
Jackson, Mississippi 39205

Dear Governor Bryant:

We are pleased to approve your request for a waiver 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).

Mississippi is seeking one waiver, and has asked that this waiver be applied to its National Emergency Grant (NEG) for the Gulf oil spill, which was awarded on June 30, 2010. The following is the disposition of the State's submission (copy enclosed).

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. The Employment and Training Administration (ETA) is granting a limited approval of this waiver, which can be applied to Mississippi's Oil Spill NEG through a grant modification. This waiver permits the use of NEG funds of up to \$5,000 to capitalize a small business in certain circumstances, in concert with entrepreneurial or small business training for the individual benefiting from the capitalization. The following conditions apply to the use of funds for small business capitalization under this waiver:

1. The State addressed several adversely impacted groups and occupations that would stand to benefit from the waiver. While the request provided evidence that commercial fishermen and shrimpers could be better served with business capitalization assistance, the State did not provide adequate substantiation for

any other group. For this reason, ETA is limiting the use of NEG business capitalization resources to commercial fishermen, shrimpers, or other wild-catch/aquaculture-related occupations.

2. Grant assistance must be limited to no more than \$5,000 per business.
3. Entrepreneurial and micro-enterprise training is permitted without the use of a waiver (WIA 134 (d)(4)(D)(vi)).
4. Use of funds to pay salaries is not permitted.
5. Use of funds for business capitalization revolving loans is not permitted.
6. The use of the NEG funds for business capitalization is limited to no more than 25 percent of the NEG funds provided to the State under Mississippi's Oil Spill NEG.
7. 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.
8. 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.
9. The policy developed by the State to implement this waiver must be consistent with the conditions outlined in this letter.
10. 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.
11. 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, 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 is provided in Training and Employment Guidance Letter No. 12-10: Supporting Entrepreneurial and Self-Employment Training through the Workforce Investment System.
- *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 On-the-Job Training (OJT) with One-Stop Career Centers. WIA allows businesses to receive reimbursement of

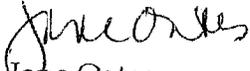
up to 50 percent of the wage rate to compensate for the costs associated with OJT, with the business incurring the remainder of the costs.

- *Recruitment and Hiring.* Posting jobs, recruiting workers, conducting interviews, and screening 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' 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.

We hope that this waiver will be of use to you in the State's recovery. If you have any questions related to the issues discussed above, please contact Lovie Thompson, Federal Project Officer for Mississippi, at (404) 302-5379, or Thompson.Lovie@dol.gov.

Sincerely,


Jane Oates
Assistant Secretary

cc: Lovie Thompson, Federal Project Officer for Mississippi, ETA Atlanta Regional Office

Date: January 25, 2012

State: Mississippi

Agency: Mississippi Department of Employment Security

Workforce Investment Act Waiver Request: Requesting Authority to waive the limitation on use of funds for capitalization of businesses at WIA Section 181 (e) to permit WIA funds to be used to capitalize a small business up to \$5,000.

Identification of Statutory or Regulatory Requirements to be Waived:

As the administrative entity for the Workforce Investment Act in Mississippi, the Mississippi Department of Employment Security (MDES) is requesting a waiver of Section 181(e) that limits the use of funds for capitalization of businesses. If granted, the waiver will be limited to the use of the Oil Spill National Emergency Grant EM-20634-10-60-A-28 funds to capitalize a small business up to \$5,000 for individuals who are eligible for and enrolled as participants in the Gulf Oil Spill NEG program. Under the waiver, this activity must be conducted in concert with entrepreneurial or microenterprise training for the individuals benefiting from the capitalization.

If granted, this waiver would take effect on the date the waiver is approved by the U. S. Department of Labor.

In keeping with the guidelines set forth at WIA section 189(i)(4)(B) and 20 CFR Part 661.420, MDES is seeking your favorable consideration of this waiver request.

Background and Justification for this Waiver:

The Mississippi Department of Employment Security is seeking this waiver to assist the many hard-working Mississippians who lost income from the oil spill and want to restart or continue their small businesses and need assistance to begin that process. For instance, there are three hundred and sixty-eight licensed, commercial shrimp vessels in Mississippi. Vietnamese-American shrimpers own and operate over 60 percent of the vessels. Typically, before the shrimping season, commercial fishers incur costs such as fuel, maintenance/repair, equipment, and supplies. However, lost fishing time during the oil spill, the public misperception of tainted seafood, and smaller catches last season have put those costs out of reach without assistance and are threatening to put more fishermen out of business. If the Department of Labor waives the regulation on business recapitalization grants to assist boat owners, it will enable the fishermen to work. Each case-managed fisherman could receive a \$5,000 grant that would put fishermen, deckhands, and other crewmembers back on the water.

The Mississippi Department of Employment Security has used this program very successfully in the past. After Hurricane Katrina hit Mississippi's coastline, the Twin Districts Workforce Investment Area implemented this waiver to operate two highly

successful programs. Twin Districts worked directly with small businesses and fishermen allowing those small businesses to receive valuable entrepreneurial and/or micro-enterprise training that they would not normally have acquired. They also created a process with the Mississippi Arts Commission that provided the same services to the artists in the area that successfully revived the tattered arts community. MDES will provide similar services to a range of small businesses impacted by the oil spill.

Many other small businesses were adversely affected by the oil spill. For instance, Sales Tax Receipts for Bay St. Louis and Waveland, which had rebounded by 2009 from Hurricane Katrina, have lost all their gains in 2010. The unemployment rates for the three coast counties are also increasing at a greater rate over the last two years than is the rate for the state as a whole. With the current downturn in the local economy caused by the oil spill, this can be one of many services that local small businesses can take advantage of in order to keep them going.

The BP Oil Spill devastated the livelihoods of many small business owners who were not able to generate income because of the loss of tourist dollars and fishery closures, as evidenced by the tax receipt and unemployment data referenced above. Without the capitalization grant, these businesses may not be able to continue operations. The primary goal and focus of this waiver is not just the \$5,000 to capitalize the business as much as providing training that will be invaluable both to them and the State of Mississippi.

Actions Taken to Remove State Statutory or Regulatory Barriers:

There are no known state or local statutory or regulatory barriers to implementing the proposed waiver. The only known barriers are federal in nature as described above.

Waiver Goals and Expected Outcomes if the Waiver is Granted:

MDES has conducted outreach to identify and to enroll eligible individuals into the Gulf Oil Spill NEG. These individuals have lost employment or a substantial share of their income due to the Gulf oil spill and this waiver, if granted, will provide a means for many of them to engage in self-sustaining work and assist in rebuilding the economic infrastructure of the oil spill impacted areas. This is critically important during the current recession, when unemployment rates in the affected parts of the Gulf Coast exceed 10% and approach 20% in the seasonal industries most affected by the oil spill.

The waiver will also enhance recovery collaboration and coordination among Oil Spill affected communities and counties; the Twin Districts LWIA; MDES; the Mississippi Development Authority; Mississippi Emergency Management Agency; Mississippi Department of Environmental Quality; Mississippi Department of Wildlife, Fisheries and Parks; and the SBA.

The State understands that business capitalization funds cannot be used for revolving loans. The State also understands that no more than 25% of the National Emergency Grant funding may be used for business capitalization.

Individuals Impacted by this Waiver:

Granting this waiver will be in alignment with Mississippi's workforce plan and the National strategic vision of promoting and developing integration of Entrepreneurship into the Public Workforce System, as stated in TEN 25-09. This waiver will also facilitate collaboration among MDES, the Twin Districts LWIA, Local Economic Development Agencies and small businesses.

Process Used to Monitor Progress in Implementing the Waiver:

The Mississippi Department of Labor has monitoring staff and processes in place to monitor all WIA programs and will perform on-site review of 100% of participant files, with review of source documents, to provide oversight and monitoring to determine the effectiveness of the waiver, as well as identify any issues or obstacles to providing services under this waiver. Fiscal management staff and processes are also in place to ensure accurate accounting and oversight of federal funds.

Process for Notice to the Public and Local Boards and the Opportunity to Comment:

The waiver request was provided to local workforce area and labor union officials via email October 24, 2011 and was available for public comment on the MDES website at <http://mdes.ms.gov/Home/RFPs/RFPBidNotices.html> from October 25, 2011 to the present. No adverse public comments were received at any point. The local workforce area supports this waiver request.