U.S. Department of Labor

NOV 12 2009

The Honorable Deval Patrick
Governor of Massachusetts
State Capitol
Boston, Massachusetts 02133

Dear Governor Patrick:

As part of Massachusetts' modification to the State Plan for Title I of the Workforce Investment Act (WIA) and the Wagner-Peyser Act, the State submitted waiver plans to request that the State's waivers of statutory and regulatory requirements under WIA be approved for the remainder of Program Year (PY) 2009 (copy enclosed). These requests are written in the format identified in WIA section 189(i)(4)(B) and 20 CFR 661.420(c) and appear to meet the standard for approval at 20 CFR 661.420(e). The following is the disposition of the State's submission. 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.

In a letter dated June 18, 2009, ETA granted Massachusetts approval of the following waiver through June 30, 2010:

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

The approval for this waiver remains in effect. The letter dated June 18, 2009 granted temporary extensions of the remainder of Massachusetts' waiver requests. The previous approval of the extensions is hereby terminated and replaced by decisions set forth in this letter. 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 (ARRA).

Requested Waivers

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

The State is requesting a waiver to permit local area formula funding to be used for statewide activities, specifically incumbent worker training. The State is granted this waiver through June 30, 2010. Under this waiver, the State will be permitted 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 low-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).

Requested 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 State is requesting a waiver to permit use of rapid response funds for incumbent worker training. The State is granted this waiver through June 30, 2010. Under this waiver, the State is permitted to use up to 10 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 WIASRD. As stated in ETA Training and Employment Guidance Letter (TEGL) No. 14-08, Section 19, issued on March 18, 2009, this waiver does not apply to funds made available through the ARRA.

Requested Waiver: 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 is requesting 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 this waiver through June 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 ETA TEGL No. 14-08, Section 19, this waiver does not apply to funds made available through the ARRA. 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.

Requested Waiver: Waiver of WIA Section 123 that requires that providers of Youth program elements be selected on a competitive basis.

The State is requesting a waiver of the requirement for competitive procurement of service providers for one of the ten youth program elements: follow-up services. The State is granted this waiver through June 30, 2010. Under this waiver, the State is permitted to allow its One-Stop Career Centers or partner agencies to directly provide this youth program element. In utilizing this waiver, the State and local areas must still meet Office of Management and Budget requirements (codified in 29 CFR 95.40-95.48 and 97.36) and all state and local procurement laws and policies.

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 continuing our partnership with you and achieving better workforce outcomes. If you have any questions related to the issues discussed above, please contact Holly O'Brien, the Acting Regional Administrator for Region I, at (617) 788-0170 or Obrien.Holly@dol.gov.

Sincerely,

Jane Oates

Jane Oates
Assistant Secretary

Enclosure

cc: Christina Eckenroth, Federal Project Officer for Massachusetts, ETA Boston Regional Office

ATTACHMENT D-1

Commonwealth of Massachusetts
Workforce Investment Act
Waiver Renewal Request

INCUMBENT WORKER TRAINING IN LOCAL WORKFORCE AREAS

The Executive Office of Labor and Workforce Development (EOLWD), as the administrative entity of the Workforce Investment Act (WIA) in the Commonwealth of Massachusetts, requests renewal of the previously approved waiver to enable local workforce investment regions to expand training activities for individuals, including incumbent workers, to better meet the needs of a regional economy. This request would waive language limiting use of local formula funding for adult, dislocated worker and youth in order to allow local areas to utilize these resources for allowable statewide employment and training activities, including flexible training design for unemployed and incumbent worker training activities, as described by WIA Section 134(a)(3)(A). Funds will continue to be tracked by funding stream and will not be combined thereby losing individual funding stream identity.

Pursuant to WIA Section 189(i) (4) (B) and the WIA Federal regulations at 20 CFR 661.420, the state of Massachusetts requests a waiver to enable local areas to expand flexible training design and incumbent worker training to better align training investments with the needs of regional employers by allowing up to 10 percent of local adult, dislocated worker and youth funds described by WIA Section 133 (b) (2) and WIA Section 129 to be expended on incumbent worker education and training activities pursuant to the rules adherent to statewide activities described by WIA Section 134(a) (3) (A).

Upon notification of this waiver renewal approval, state policy will be examined to determine compliance with the terms of the waiver and applicable policies and procedures will be revised, if necessary. State policy prefers that regions use local formula resources to expand services to customers in the form of education and training of the allowable statewide activities outlined in Section 134(a)(3)(A).

The U.S. Department of Labor has approved a similar waiver for a number of other states and we ask that our request for renewal also be granted for the waiver. We request that the new waiver period begin July 1, 2009.

A. Statutory or Regulatory Requirements to be Waived

Language in Section 133 (b) (2) and WIA Section 129 limiting use of local adult, dislocated worker and youth formula funding for *allowable* statewide employment and training activities, including flexible training design for unemployed and incumbent worker training activities (described in Section 134(a) (3) (A)).

B. Goals of the Waiver and Expected Programmatic Outcomes if Waiver is Granted.

The waiver request is consistent with the national policy direction to develop a workforce system that is responsive to the demands of both individual and employer customers. In addition, it supports a key priority of the Governor to close the "skill gaps" between job vacancies in the state and the available workforce through better alignment of public investments with regional data on employer need.

The Commonwealth anticipates an increase in capacity of local workforce regions to respond to labor market changes within their region. The waiver allows local regions to increase the effectiveness and efficiency of education and training vendors and institutions by connecting program design and curriculum with the labor market needs for the region through the use of Workforce Investment Act funding. Flexibility in the use of local formula funding will truly encourage collaboration with economic development organizations, business, industry associations, education and training institutions, Workforce Investment Boards, One-Stop Career Centers and other workforce intermediaries to change the system of delivery to align supply and demand for skilled workers. Specifically it provides the opportunity to increase collaborations with industry to address worker training.

C. State or Local Statutory or Regulatory Barriers

There is no state or local statutory or regulatory barrier to implementing the proposed waiver.

D. Description of Individuals Impacted by the Waiver

The Commonwealth anticipates an increase in the number of incumbent workers receiving training who might otherwise be ineligible.

All WIA customers and WIA partners -- including the stewards of local formula funding, namely, Workforce Investment Boards, Title I Administrators and One-Stop Careers -- will be positively affected by adoption of this waiver request.

E. Opportunity for Public Comment and the Process for the Implementation of the Waiver

This request was developed as a result of goals expressed by local workforce investment areas. As with all other major policy and procedural decisions made by the Commonwealth of Massachusetts, we relied heavily upon input from local area staff and boards. All requests for waiver renewal have been posted on the MassWorkforce website, with a procedure for submission of comments and questions. Public input is factored into all policy considerations in the Commonwealth.

The Executive Office of Labor and Workforce Development (EOLWD) and its agencies, as the State administrator of WIA, will continue to monitor the implementation of this waiver and work with the 16 local workforce investment regions and develop the appropriate state policies to govern its use by local regions.

ATTACHMENT D-2

Commonwealth of Massachusetts
Workforce Investment Act
Waiver Renewal Request

EXPANDED LAYOFF AVERSION ACTIVITIES FOR RAPID RESPONSE

The Executive Office of Labor and Workforce Development (EOLWD), as the administrative entity of the Workforce Investment Act (WIA) in the Commonwealth of Massachusetts, requests renewal of a previously approved waiver to allow the use of up to a 10% portion of rapid response funding described in WIA Sec. 133(a)(2) funding for incumbent worker training as part of the state resources to assist regions, workers and companies anticipating layoffs to retain workers or retrain workers for new companies for layoff aversion and skill development purposes. Massachusetts would create the necessary polices and procedures to approve these activities, including consultation -with the Massachusetts Rapid Response Team and the appropriate local administrators.

Upon notification of this waiver renewal approval, state policy will be amended or created to comply with the terms of the waiver and applicable policies and procedures will be developed for workforce regions.

The U.S. Department of Labor has already approved a similar waiver for a number of other states and we ask that our request for renewal also be granted for the waiver. We request that the new waiver period begin July 1, 2009 and apply to subsequent years.

We wish to note that while actual implementation of the originally approved waiver has been delayed as a result of unforeseen structural incongruities with the original implementation model, those concerns are being addressed and the Commonwealth intends to proceed with full implementation upon notice of approval, particularly in light of restrictions placed on the additional WIA dislocated worker funding made available to states under the American Recovery and Reinvestment Act.

A. Statutory or Regulatory Requirements to be Waived

Massachusetts requests a waiver of language in WIA Sec. 133(a)(2) to allow up to a maximum of 10% of the funding described in Sec. 133(a)(2) to be used for the described activities allowable under statewide activities described in 134(a).

B. Goals of the Waiver and Expected Programmatic Outcomes if Waiver is Granted.

The waiver request is consistent with the national policy direction to develop a workforce system that is responsive to the demands of both individual and employer customers. In addition, it supports a key priority of the Governor to close the "skill gaps" between job vacancies in the state and the available workforce through better alignment of public investments with regional data on employer need.

The Commonwealth anticipates an increase in capacity of local workforce regions to manage service changes required by the needs of dislocated workers and changes in the volume of layoff activity.

Flexibility in the use of Rapid Response Set-Aside funding will truly encourage collaboration with economic development organizations, business, industry associations, education and training institutions, Workforce Investment Boards, One-Stop Career Centers and other workforce intermediaries to change the system of delivery to align supply and demand for skilled workers. Specifically it provides the opportunity to increase industry collaborations to address worker training.

C. State or Local Statutory or Regulatory Barriers

There is no state or local statutory or regulatory barrier to implementing the proposed waiver.

D. Description of Individuals Impacted by the Waiver

Workers in companies anticipating layoffs or workers affected by layoffs would most directly benefit.

All WIA customers and WIA partners -- including the stewards of local formula funding, namely, the statewide Rapid Response Team, Workforce Investment Boards, Title I Administrators and One-Stop Careers -- will be positively affected by adoption of this waiver request.

E. Opportunity for Public Comment and the Process for the Implementation of the Waiver

This request was developed as a result of goals expressed by the Statewide Rapid Response Team and local areas. As with all other major policy and procedural decisions made by the Commonwealth of Massachusetts, we relied heavily upon input from local area staff and boards. All requests for waiver renewal have been posted on the MassWorkforce website, with a procedure for submission of comments and questions. Public input is factored into all policy considerations in the Commonwealth.

The Executive Office of Labor and Workforce Development (EOLWD) and its agencies, as the State administrator of WIA, will monitor the implementation of this waiver and work with the 16 local workforce investment regions and develop the appropriate state policies to govern its use by local regions.

ATTACHMENT D-3

Commonwealth of Massachusetts
Workforce Investment Act
Waiver Renewal Request

EXPANDED TRANSFER AUTHORITY

The Executive Office of Labor and Workforce Development (EOLWD), as the administrative entity of the Workforce Investment Act (WIA) in the Commonwealth of Massachusetts, requests renewal of the previously approved waiver to enable local workforce investment regions to transfer up to 50% for Adult and Dislocated Worker funds. Note that Massachusetts was previously approved to allow up to a 30% transfer authority. The requested waiver will provide local boards with greater flexibility to respond to changes in their local labor markets, and will help ensure that WIA funds allocated to each local area are being utilized in a way that will maximize customer service.

The U.S. Department of Labor has already approved a similar waiver for a number of other states and we ask that our request for renewal also be granted for the waiver. We request that the new waiver period begin July 1, 2009 and apply to subsequent years.

In keeping with the guidelines set forth in WIA Section 189(i)(4)(b) and 20 C.F.R. Part 661.420(c), please accept the following as a request for a waiver:

A. Statutory or Regulatory Requirements to be Waived

WIA Section 133(b)(4) and 20 C.F.R. Part 667.140 state that a Local Board may transfer, if such a transfer is approved by the Governor, not more than 20 percent of the funds allocated to the local area in a fiscal year between Adult employment and training activities and Dislocated Worker employment and training activities.

The Commonwealth of Massachusetts requests renewal of the waiver that allows local boards to transfer up to 50 percent of a program year allocation for Adult funds and up to 50 percent of a program year allocation for Dislocated Worker funds between the two funding streams.

B. Goals of the Waiver and Expected Programmatic Outcomes if Waiver is Granted.

The main anticipated goal is increased flexibility for the local areas in allocating and expending Adult and Dislocated Worker funds. Such flexibility would enable local areas to better serve the needs of their customers, and would heighten their ability to respond to changes in the local labor market. In addition, greater flexibility in use of funds may allow Local Workforce Investment areas to commit additional WIA Title I formula funding for education and training purposes.

The U.S. Department of Labor has already approved similar waivers for other states, and we ask that our waiver renewal request also be granted.

C. State or Local Statutory or Regulatory Barriers

There is no state or local statutory or regulatory barrier to implementing the proposed waiver.

D. Description of Individuals Impacted by the Waiver

All Adults and Dislocated Workers, as well as business customers, will benefit from the waiver. Granting local boards the ability to move substantial funds to the areas of greatest need will ensure optimum service to the general population of that workforce area.

E. Opportunity for Public Comment and the Process for the Implementation of the Waiver

This request was developed as a result of concerns expressed by local areas. As with all other major policy and procedural decisions made by the Commonwealth of Massachusetts, we relied heavily upon input from local area staff and boards. The problems with the prior 30% limitation on fund transfers between Adult and Dislocated Worker funding streams were discussed with the local areas to gain input on those problems and on the benefits of being granted this waiver. This waiver will be especially helpful in serving employed workers in an effort to assist them in retaining employment or obtaining employment leading to self-sufficiency.

All requests for waiver renewal have been posted on the MassWorkforce website, with a procedure for submission of comments and questions. Public input is factored into all policy considerations in the Commonwealth.

The Executive Office of Labor and Workforce Development (EOLWD) and its agencies, as the State administrator of WIA, will monitor the implementation of this waiver and work with the 16 local workforce investment regions and develop the appropriate state policies to govern its use by local regions.

ATTACHMENT D-4

Commonwealth of Massachusetts
Workforce Investment Act
Waiver Renewal Request:

INCLUDE YOUTH FOLLOW-UP SERVICES AS A FRAMEWORK SERVICE

The Executive Office of Labor and Workforce Development (EOLWD), as the administrative entity of the Workforce Investment Act (WIA) in the Commonwealth of Massachusetts, requests renewal of the previously approved waiver to allow follow-up services to be combined with youth program design framework services, without a need for a competitive procurement process.

Under the regulations, all ten elements of youth services, including follow-up services, must be provided by youth service providers that have been procured in separate competitive bidding processes. Framework services may be provided either by the fiscal agent without a competitive procurement, or by another organization subsequent to a competitive award. Providers of framework services are in a better position to provide follow-up services to youth, and the requirement of an additional competitive bidding process for follow-up services is duplicative and burdensome.

This waiver renewal would enable a more streamlined approach to case management by allowing providers of youth framework services to provide personal attention on a consistent basis to each youth as they access many different programs available for education and training.

The U.S. Department of Labor has already approved similar waivers for a number of other states and we ask that our waiver renewal request be granted. We request that the new waiver period begin July 1, 2009 and apply to subsequent years.

A. Statutory or Regulatory Requirements to be Waived

WIA Section 123, Section 117(h)(4)(B)(i), and 20 C.F.R. Part 664.400 require that eligible providers of youth services be selected by awarding a grant or contract on a competitive basis for youth activities and services.

B. Goals of the Waiver and Expected Programmatic Outcomes if Waiver is Granted.

A waiver renewal will maximize resources by allowing framework service providers to provide follow-up services to youth, instead of requiring a second competitive bidding process.

Granting the waiver renewal will decrease state and local paperwork, reduce the need for extra staff needed to track and report the progress of a youth through various programs, and

make available youth case staff to work directly with youth on more substantive training and educational goals.

Approving the waiver renewal will allow for a smoother flow of data that documents the delivery of youth services, as well as the outcomes that result from youth participation, since the organization that is providing framework services will be in a better position to understand where each youth is in relationship to his or her Individual Service Strategy, when a youth has exited a WIA service or the WIA program, and when the period for follow-up begins.

We also believe that defining follow-up as a framework service will support the implementation of common performance measures, since the framework service provider will be in the best position to know when a WIA youth is also participating in another partner program, and therefore make a better administrative judgment as to when program completion will trigger the time period to determine a performance outcome under the new common measures.

C. State or Local Statutory or Regulatory Barriers

There is no state or local statutory or regulatory barrier to implementing the proposed waiver.

D. Description of Individuals Impacted by the Waiver

The waiver will directly impact WIA eligible youth.

F. Opportunity for Public Comment and the Process for the Implementation of the Waiver

This request was developed as a result of concerns expressed by local areas. As with all other major policy and procedural decisions made by the Commonwealth of Massachusetts, we relied heavily upon input from local area staff and boards. All requests for waiver renewal have been posted on the MassWorkforce website, with a procedure for submission of comments and questions. Public input is factored into all policy considerations in the Commonwealth.

The Executive Office of Labor and Workforce Development (EOLWD) and its agencies, as the State administrator of WIA, will monitor the implementation of this waiver and work with the 16 local workforce investment regions and develop the appropriate state policies to govern its use by local regions.