

Oklahoma Employment Security Commission
Workforce Integrated Programs Division

MEMORANDUM—M-13-2010

TO: WIA Board Staff
WIA Fiscal Agents
Area Managers
Local Office Managers

FROM: Richard J. Gilbertson, Director
Workforce Integrated Programs Division

DATE: August 30, 2010

SUBJECT: Workforce Investment Act (WIA) and Wagner-Peyser Act (WP) State Plan and Waivers for Program Year (PY) 2010; expiring Waivers and newly requested Waivers.

BACKGROUND: Training and Employment Guidance Letter (TEGL) No. 21-09, issued on April 15, 2010, provided guidance for states to secure approval of their WIA/WP State Plans and waivers for PY 2010, and included the option to receive an extension of the existing State Plan and waivers for an additional year without submitting a formal request.

MESSAGE: The U.S. Department of Labor has approved an extension of Oklahoma's current Workforce Investment Act (WIA) and Wagner-Peyser Act (WP) State Plans and Waivers for Program Year (PY) 2010, with the exception of the Work-Flex Waiver which has expired. DOL has also granted one new Waiver for Program Year 2010.

Extension of State Plan

Oklahoma's existing State Plan expired on June 30, 2010. DOL has determined under WIA Section 112 (29 USC 2822) that the Employment and Training Administration (ETA) is extending the approval of Oklahoma's State Plan for WIA Title I and the Wagner-Peyser Act for Program Year 2010, (July 1, 2010 through June 30, 2011). Once established, PY 2010 WIA and WP final performance goals will be incorporated into the official copy of the State Plan.

Waivers

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

Extension of Waivers

Waiver Extension: Waiver of the required 50 percent employer contribution for customized training at WIA Section 101(8)(C).

The State 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 State is granted an extension of this waiver through June 30, 2011. 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 State must use the appropriate program funds for the appropriate WIA-eligible population. The State may provide customized training to low-income adults with WIA Adult funds, and may provide customized training to dislocated workers with WIA Dislocated Worker funds. Customized training provided with statewide funds must serve WIA eligible individuals.

Waiver Extension: 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 through a sliding scale based on the size of the business. The State is granted an extension of this waiver through June 30, 2011. 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 State must use the appropriate program funds for the appropriate WIA-eligible population. The State may provide on-the-job training to low-income adults with WIA Adult funds, and 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 Extension: Waiver of WIA Section 134(a) to permit local areas to use a portion of local funds for incumbent worker training.

The State 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 State is granted an extension of this waiver through June 30, 2011. Under this waiver, the State will be permitted to allow local areas to use up to **20 percent** of local Dislocated Worker funds. 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), 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. 3009, **"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 Extension: 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 June 30, 2011. 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 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 ETA Training and Employment Guidance Letter 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.

Waiver Extension: 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 June 30, 2011. Under this waiver, the State can use ITAs for youth program participants who are at least 18, regardless of their age and status at enrollment. The State should ensure that funds used for ITAs are tracked and reflected in the individual service strategies for these youth. ETA also encourages the State to co-enroll youth over the age of 18 into the Adult program and to use Adult funds for ITAs where possible.

Waiver Extension: 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 June 30, 2011.

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. 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 Extension: 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 is granted an extension of this waiver through June 30, 2011. 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. In a letter dated May 7, 2010, ETA granted Oklahoma approval of the following waivers related to summer youth employment activities through September 30, 2010. The approvals for these waivers remain in effect.

- Waiver of performance measures for youth participants in summer youth employment activities and co-enrolled in TANF and WIA programs.
- Waiver of certain provisions under WIA section 129 and 20 CFR 664 to provide program design flexibility in serving youth participants in summer youth employment activities and co-enrolled in TANF and WIA programs.

New Waiver Requests

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

The State requested 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, 2011. Under this waiver, the State is permitted to allow its One-Stop Career Centers or partner agencies to directly provide youth program elements. 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.

Waiver Request: Waiver of the prohibition at 20 CFR 664.510 on the use of Individual Training Accounts for younger and in-school youth.

The State requested a waiver to allow local areas to provide ITAs to youth who had originally enrolled when under 18 but had since reached age 18. The State does not need a separate waiver for this. ETA's approval of a waiver, described above, to allow the State to provide ITAs to older and out-of-school youth encompasses youth who are age 18 or older, regardless of the youth's age and status at enrollment.

Expiring Waivers

Work-Flex Designation: Termination of the State's work-flex plan.

In keeping with WIA Section 192(c), which restricts approval of a state's work-flex plan to a period of not more than five years, ETA is terminating approval of Oklahoma's work-flex designation. Oklahoma received its initial work-flex designation in PY 2005, and therefore is no longer eligible for such designation. The State must terminate all waivers granted to local workforce investment areas under its work-flex designation effective June 30, 2010.

ACTION: Please share this notice with appropriate staff.

INQUIRIES: If you have any questions, please contact Tami Decker at (405) 962-7595, tdecker@oesc.state.ok.us or Jackie Younge (405) 557-5314, Jackie.Younge@oesc.state.ok.us.