



NEW YORK STATE WORKFORCE DEVELOPMENT SYSTEM TECHNICAL ADVISORY

Workforce Development System Technical Advisory # 10-19

TO: Workforce Development Community

DATE: September 14, 2010

SUBJECT: **UPDATED** State Policy Guidelines and Required Actions for the Implementation of WIA Waivers by Local Workforce Investment Boards (LWIBs)

Purpose:

To inform LWIBs of the policies and requirements regarding implementation of various WIA Waivers recently granted to New York State by the United States Department of Labor (USDOL)

Background:

The purpose of the general statutory and regulatory waiver authority made available under WIA is to provide flexibility to states and local areas and enhance their ability to improve the statewide workforce investment system. A letter approving several requested waivers was received from the Assistant Secretary on June 30, 2010. These waivers are further described below. The approval from USDOL and the complete waiver requests that were submitted can be found in **Attachment A** to this Technical Advisory.

Policy:

USDOL has extended the following waivers through June 30, 2011:

- 1. 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.**

This waiver was previously granted to the State and is extended by USDOL for Program Year 2010. 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. The State is required to report performance outcomes for any incumbent workers served under this waiver in the Workforce Investment Act Standardized Record Data System (WIASRD), field 309.

2. Waiver of the Prohibition at 20CFR 664.520 on the Use of Individual Training Accounts (ITA) for Older and Out-of-School Youth.

This waiver was previously granted to the State and is extended by USDOL for Program Year 2010. Under this waiver, local areas within the State can use ITAs for older and out-of-school youth program participants.

3. Waiver to permit the State to replace the performance measures at WIA Section 136(b) with the common measures.

This waiver was previously granted to the State and is extended by USDOL for Program Year 2010. 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 also use the three youth common performance measures to negotiate goals and report outcomes for the WIA Youth program.

4. Waiver for the Inclusion of Youth Follow-Up Services and Work Experience as a Youth Program Framework Service.

The State was previously granted a waiver for the inclusion of youth follow up services as a youth program framework service. This waiver has been extended by USDOL and expanded to include work experience; approval is granted for Program Year 2010. This waiver expands the definition of “youth program design framework services” to include follow-up services *and work experience* when these services are provided by the grant recipient/fiscal agent. In these local areas, follow-up services and work experience do not need to be competitively procured to a third party. The goal of this waiver is to allow for greater continuity of service and monitoring of progress

USDOL has approved each of the following new waiver requests through June 30,2011:

1. Waiver of the Requirement for a 50 Percent Employer Match for Customized Training, to Permit a Graduated Scale Match to Increase Employer Connections with the One Stop System.

This waiver suspends the requirement that employers must pay at least 50 percent of any customized training costs; and, permits local areas to apply a graduated scale for customized training as follows: 1) no less than 10% match for businesses with 50 or fewer employees, and 2) no less than 25% match for businesses with 51 – 250 employees. For businesses with more than 250 employees, the current statutory requirements of a 50% match would continue to apply. The State must use the appropriate program funds for the appropriate WIA-eligible population. Customized training provided with statewide funds must serve WIA-eligible individuals. This waiver applies to Program Year 2010. Employer size is based on the company’s local operation.

The goals of the waiver are to increase the overall number of individuals receiving training services, to increase the number of businesses availing

themselves of customized training services, to strengthen the labor pool by providing workers with more marketable skills, to strengthen the business community by increasing its competitiveness in the global economy, to improve the capacity of local boards to market demand-driven services and to build beneficial relations with a greater number of businesses in the private sector.

2. Waiver to Increase the Employer Reimbursement for On-the-Job Training (OJT) for Small- and Medium-Sized Businesses.

This waiver permits local areas to reimburse employers more than 50 percent of OJT wages, based on business size i.e., 1) Up to 90% for businesses with 50 or fewer employees; 2) Up to 75% for businesses with 51 – 250 employees; and 3) Up to 50% (current statutory requirement) for businesses with 250 or more employees. The State must use the appropriate program funds for the appropriate WIA-eligible population. OJT provided with statewide funds must serve WIA-eligible individuals. This waiver applies to Program Year 2010. Employer size is based on the employment at the company's local operation where the OJT placements will be made.

The goals of the waiver are to: increase the overall number of individuals receiving OJT; accelerate businesses hiring through OJT; strengthen the labor pool by providing unemployed workers with marketable skills; strengthen the business community by increasing its competitiveness in the global economy, improve the capacity of local boards to market demand-driven services; and to build beneficial relations with a greater number of businesses in the private sector.

3. Waiver to Permit Local Areas to Request the use of up to 10 Percent of the Local Area's Formula Allocation Funds for Adult and Dislocated Workers to Support Local Incumbent Worker Training Programs.

This waiver will allow local areas to request State approval for the use of up to 10 percent of the local Dislocated Worker funds and up to 10 percent of local Adult funds to provide incumbent worker training. The Adult funds and Dislocated Worker funds may only be used for incumbent worker training as part of layoff aversion. USDOL Training and Employment Guidance Letter (TEGL) NO. 26-09, "WIA Waiver Policy and Waiver Decisions for PY 2009 and 2010," establishes that use of Adult funds under this waiver is to be restricted to serving "low income" individuals. For purposes of this waiver, the definition of "low-income" may be based on self-sufficiency criteria. In New York State, LWIBs may use their self sufficiency standard that was developed in accordance with WIA Final Rules §663.230. The State is required to report performance outcomes for any incumbent workers served under this waiver in the Workforce Investment Act Standardized Record Data System (WIASRD), field 309. This waiver applies to Program Year 2010.

The goals of this waiver are to: provide more customers with access to essential services that they may need; increase services to higher skilled and higher wage businesses, which may not otherwise be served by the local workforce system;

and to improve job retention and avoid additional layoffs.

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. As stated in TEGL 30-09, "Layoff Aversion Definition and the Appropriate Use of Incumbent Worker Training for Layoff Aversion Using a Waiver," ETA considers a layoff averted when: 1) a worker's job is saved with an existing employer that is at risk of downsizing or closing; or 2) a worker at risk of dislocation transitions to a different job with the same employer or a new job with a different employer and experiences no, or a minimal spell, of unemployment.

4. Waiver to Discontinue the Collection of Seven of the Data Elements in Section 1 of the WIASRD for Incumbent Workers Trained with WIA Funds.

This waiver suspends the reporting requirement that State and local areas capture the following data elements in the WIASRD for incumbent workers: 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). This waiver will reduce the data collection burden for businesses participating in/being served under WIA-funded incumbent worker training programs. This waiver applies to Program Year 2010.

5. Waiver for the Collection of Performance Information for Determining Subsequent Eligibility and Dissemination of Performance Information on the State List

This waiver suspends the requirement that a determination of subsequent eligibility be made for training providers currently on the State's Eligible Training Provider List (ETPL). Under this 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. The main goal of this waiver is to maintain a State ETPL that provides a robust range of customer choice during a period of increased demand for training. This waiver applies to Program Year 2010.

Action:

Local Areas should complete the attached '**Request to use Program Year 2010 WIA Waivers' (Attachment B)** and submit to WDTD.Onestop@labor.ny.gov with "PY 2010 Request – WIA Waivers" in the subject line of the e-mail. **This form should be submitted no later than Friday, October 1, 2010.** A copy should also be submitted to your State Representative.

If Local Areas are seeking to implement the new waiver numbered 3 above (*To Permit Local Areas to Request the use of up to 10 Percent of the Local Area's Formula Allocation Funds for Adult and Dislocated Workers to Support Local Incumbent Worker Training Programs*), please contact your local Business Service Representative to make

sure the IWT qualifies as layoff aversion, and that the training is appropriate and qualifies as skills attainment. Please complete the **'Request to use Local Adult and/or Dislocated Worker funds for Incumbent Worker Training (IWT)'** (**Attachment C**) and submit to WDTD.Onestop@labor.ny.gov with "PY 2010 Request – Local Funds for IWT" in the subject line of the e-mail. A copy should also be submitted to your Local Business Service Representative. If using Adult funds, local areas must provide their Self-Sufficiency definition on the form.

For Local Areas conducting any IWT programs, you can then use the new waiver numbered 4 above (*To Discontinue the Collection of Seven of the Data Elements in Section 1 of the WIASRD for Incumbent Workers Trained with WIA Funds*).

Inquiries:

Please direct all questions regarding this Technical Advisory and WIA waivers to your State Representative.

References:

Workforce Investment Act of 1998, Sections 101(8)(c), 101(31)(B), 101(33), 101(39), 122(c)(5), 123, 129(c)(2)(D)&(I), 134(a)(3)(A)(iv)(I) and 134(e)(3)(B)(i)&(ii); Workforce Investment Act Final Rules, 20 CFR Sections 663.530, 663.700(a), 663.710(b), 663.715, 664.310, 664.405 and 667.300(a).

TEGL 17-09, "Quarterly Submission of Workforce Investment Act Standardized Record Data (WIASRD)."

TEGL 26-09, "Workforce Investment Act (WIA) Waiver Policy and Waiver Decisions for PY2009 and 2010."

TEGL 30-09, "Layoff Aversion Definition and the Appropriate Use of Incumbent Worker Training for Layoff Aversion Using a Waiver."

Attachments:

- A. USDOL Approval letter and complete WIA waiver requests for PY2010
- B. Request to use Program Year 2010 WIA Waivers
- C. Request to use Local Adult and/or Dislocated Worker funds for Incumbent Worker Training (IWT)



JUN 30 2010

The Honorable David A. Paterson
Governor of New York
State Capitol
Albany, New York 12224

Dear Governor Paterson:

This letter provides approval of an extension of New York's current Workforce Investment Act (WIA) and Wagner-Peyser Act (W-P) State Plan and waivers for Program Year (PY) 2010. This letter also responds to New York's requests for new waivers.

Training and Employment Guidance Letter (TEGL) No. 21-09, issued on April 15, 2010, provides guidance for states to secure approval of their WIA/W-P 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.

Extension of State Plan

New York's existing State Plan will expire on June 30, 2010. This letter constitutes a written determination under WIA Section 112 (29 USC 2822) that the Employment and Training Administration (ETA) is extending the approval of New York's State Plan for WIA Title I and the Wagner-Peyser Act for Program Year 2010, July 1, 2010 through June 30, 2011.

The Grant Officer will issue a Notice of Obligation for the "July portion" of the WIA formula allocations for Adult and Dislocated Worker programs, effective July 1, 2010, under the PY 2010 Annual Funding Agreement. The W-P program's Annual Funding Agreement for PY 2010/Fiscal Year 2011 will be sent to the designated state grantee agency for signature and return to the Grant Officer for execution, effective July 1, 2010. The W-P Annual Funding Agreement will provide for the initial base allocation of PY 2010 funds.

Performance Levels

New York has decided to extend their existing PY 2009 WIA and W-P performance goals for PY 2010. ETA has incorporated these performance goals,

identified as PY 2010 performance goals, into the Regional and National Office copies of the State Plan. Please include these PY 2010 goals in the State's official copy of the State Plan.

Waivers

As part of the State's extension of the WIA/W-P State Plan, and as described in TEGL 21-09, ETA has made determinations regarding an extension of New York's PY 2009 waivers of statutory and regulatory requirements under WIA for PY 2010. The State also submitted a request for new waivers (copy enclosed). The State's request for new waivers is written in the format identified in WIA section 189(i)(4)(B) and 20 CFR 661.420(c). 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 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. Other statewide activities are not permitted under the waiver. 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 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. 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 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 older and out-of-school youth program participants. The State should ensure that funds used for ITAs are tracked and reflected in the individual service strategies for these youth.

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

The State was previously granted a waiver of the requirement for competitive procurement of service providers for one of the ten youth program elements: follow-up services. The State has requested to expand this waiver for an

additional element: work experience. The State is granted approval of 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 the two youth program elements of follow-up services and work experiences. 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.

New Waiver Requests

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

The State is requesting 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 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 of WIA Section 101(31)(B) to increase the employer reimbursement for on-the-job training.

The State is requesting 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 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 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 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 this waiver through June 30, 2011. Under this waiver, the State will be permitted to allow local areas 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 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 State 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 Waivered Funds" 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 State is requesting 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 State 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 State is granted this waiver through June 30, 2011.

Waiver of Section 129(c)(4)(A) of WIA that requires that a minimum of 30 percent of Youth funds be used for services to out-of-school youth.

The State is requesting a waiver of the 30 percent youth funds expenditure requirement for out-of-school youth to allow certain alternative school enrollees to count toward the threshold expenditure amount. ETA denies this waiver. High school drop-out data suggests that, even with state legislation that keeps increasingly older youth enrolled in full-time school, a considerable population of out-of-school youth is present in the State who could be served by WIA Youth funds.

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 is requesting 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 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.

Waiver of WIA regulation 20 CFR 663.820 of the requirement that Dislocated Workers be enrolled in training by the end of the 13th week after layoff to receive needs-related payments.

Provisions related to eligibility of providers and participants are excluded from the WIA waiver authority, and cannot be waived. Therefore, we are denying this waiver.

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 TEGP 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 working together as you implement your State Plan for PY 2010. If you have any questions related to the issues discussed above, please contact Lee Reynolds, the Federal Project Officer for New York, at (617) 788-0130 or Reynolds.Tricia@dol.gov.

Sincerely,



Jane Oates
Assistant Secretary

Enclosure

cc: Colleen Crawford Gardner, Commissioner, New York State Department
of Labor
Karen A. Coleman, Director Div. of Employment & Workforce Solutions
Holly O'Brien, Regional Administrator, ETA Boston Regional Office
Janet Sten, Federal Coordinator for Plan Review and Approval
Thomas Martin, Grant Officer
Lee Reynolds, Federal Project Officer for New York



New York State Department of Labor
David A. Paterson, Governor
Colleen C. Gardner, Commissioner

May 14, 2010

Ms. Janet Sten
Federal Coordinator for Plan Review and Approval
Division of Workforce System Support
Employment and Training Administration
U.S. Department of Labor
200 Constitution Avenue, NW, Room S-4231
Washington, DC 20210

Dear Ms. Sten:

As part of New York State's modification to the State Plan for Title I of the Workforce Investment Act (WIA) and the Wagner-Peyser Act, please accept this request for waivers of statutory and regulatory requirements under those Acts for Program Year (PY) 2010. These requests are written in the format identified in WIA Section 189(i)(4)(B) and 20 CFR 661.420(c) and comply with the guidance provided in Training and Employment Guidance Letter 21-09.

For PY 2009, New York State was granted the following waivers:

- **Funds Flexibility:** Waiver to permit the State to use a portion of rapid response funds to provide statewide activities identified at WIA §134(a)(3), including incumbent worker training
- **Youth:** Waiver of the prohibition on use of Individual Training Accounts for youth to allow flexibility in provision of training services to youth
- **Youth:** Waiver of the requirement for competitive procurement of service providers for follow-up services to ensure continuity of youth services
- **Performance:** Waiver to permit implementation of (and reporting only) common measures in place of current measures
- **Recovery Act Youth Funds:** Waiver of the requirement for competitive selection of youth service providers to provide flexibility in selecting providers for summer youth employment opportunities
- **Recovery Act Youth Funds:** Waiver of performance measures for older, out-of-school youth who participate in work experience only to allow the use of the work readiness indicator as the only indicator of performance for such youth
- **Recovery Act Youth Funds:** Waiver of required youth program elements for older, out-of-school youth who participate in work experience only to allow local areas flexibility to provide follow-up services and the type of assessment deemed appropriate for such youth

New York State has reviewed these waivers and has concluded that they continue to support the strategies outlines in its existing State Plan and match the needs of the State's workforce system. Therefore New York State is requesting that these waivers be extended through PY 2010 (July 1, 2010 – June 30, 2011).

In addition, New York State is requesting the following new waivers for PY 2010:

- **Funds Flexibility:** Waiver of the requirement for a 50% employer contribution for customized training, to permit the use of a sliding scale to reduce the contribution based on the size of the business
- **Funds Flexibility:** Waiver of the 50% limit on reimbursement to employers for On the Job Training (OJT) to permit local areas to use a sliding scale to increase the reimbursement based on the size of the business
- **Funds Flexibility:** Waiver to permit local areas to use a portion of local Adult and Dislocated Worker for statewide activities, specifically Incumbent Worker Training (IWT)
- **Youth:** Waiver of the requirement for competitive procurement of service providers for two youth elements to ensure continuity of youth services, specifically work experience and follow-up services.
- **Youth:** Waiver to allow certain alternative school enrollees to count toward the 30% out-of-school youth expenditure requirement
- **Performance:** Waiver to permit a state to discontinue the collection of seven of the data elements in Section 1 of the WIASRD for incumbent workers trained with state-level 15% and Rapid Response funds and local area WIA formula funds. Under the waiver, the State will not need to collect from these participants the following WIASRD data 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)
- **Other:** Waiver of Requirement to Collect Performance Information for Determining Subsequent Eligibility and Dissemination of Performance Information on the State Eligible Training Provider List
- **Other:** Waiver of the requirement that Dislocated Workers must be enrolled in training by end of the 13th week after lay-off to receive Needs-Related Payments (NRPs)

Please see the attachments for a full description of each waiver request. All waivers were posted on-line for public comment.

Thank you for your consideration.

Sincerely,



Karen A. Coleman
Director, Division of Employment and
Workforce Solutions

Attachments (8)

**State of New York
Workforce Investment Act
Waiver Request**

Permit local areas to request the use of up to 10 percent of the local area's formula allocation funds for adult and dislocated workers to support local incumbent worker training programs

The New York State Department of Labor, as the administrative entity of the Workforce Investment Act (WIA) in the State of New York, submits this request for a waiver of the language that limits the authority to provide incumbent worker training to the State. The waiver will allow local areas to request the use of up to 10 percent of the local area's formula allocation funds for adult, and dislocated workers to provide incumbent worker training, identified at WIA Section 134(a)(3)(A)(iv)(I). The adult funds and dislocated worker funds may only be used for incumbent worker training as part of layoff aversion.

Local Areas will submit a request to the State for approval prior to implementing this action. The waiver will enhance the ability of the State and local areas to carry out WIA Title IB adult, and dislocated worker activities. Funds will continue to be tracked by funding stream, and will not be combined, losing individual funding stream identity.

This waiver request will apply to the balance of Program Year 2009, Program Year 2010 and subsequent years.

A. Statutory or Regulatory Requirements to be Waived

Language that limits the authority to provide the incumbent worker training identified in WIA Section 134(a)(3)(A)(iv)(I) to the State.

B. Goals and Expected programmatic Outcomes if Waiver is Granted

Approval of this waiver would allow the State to provide additional funding toward incumbent worker training programs to improve job retention and avoid additional layoffs. This waiver will provide Local Boards with greater flexibility in designing and implementing incumbent worker training as part of layoff aversion, and will improve the ability of Local Boards to respond to changes within their Local Areas. It will help promote the development of local projects to improve job retention and avoid additional layoffs. In addition, this waiver will provide more customers with access to essential services that they may need, and will increase services to higher skilled and higher wage businesses, which may or may not otherwise be served by the local workforce system. Approval of this waiver would allow the State to provide additional funding toward incumbent worker training programs to improve job retention and avoid additional layoffs.

Finally, it would enhance alignment of New York State's workforce development strategies with USDOL's national strategic priorities, including enhanced integration of workforce investment

systems in order to respond better to the needs of customers; and provide greater flexibility in structuring workforce investment systems.

This waiver request is consistent with New York State's WIA/Wagner-Peyser Strategic Plan which places an emphasis on increasing access to training, expanding services and creating innovative and informed programs designed to develop and maintain a highly skilled workforce. Through this pool of highly skilled workers and incumbent worker training programs, the New York State WIA/Wagner-Peyser Strategic Plan also looks to strengthen the business community.

C. State or Local Statutory or Regulatory Barriers

There are no State or local statutory or regulatory barriers to implementing the proposed waiver.

D. Description of Individuals Impacted by the Waiver

The waiver will directly impact incumbent workers and their respective employers/businesses. The workers will be able to train and improve their skills and keep good jobs, which may help increase their confidence and will allow them to compete in a more technologically sophisticated, knowledge based global economy. The respective employers/businesses will, in turn, benefit from this.

E(i). Description of the process(es) used to monitor the progress in implementing the waiver

New York State monitors its thirty-three local areas through the Financial Oversight and Technical Assistance (FOTA) Unit and Program Specialists (program monitoring). Financial oversight reviews are conducted in accordance with the FOTA Review Guide and consist of reviews in areas, such as financial management, cost allocation, procurement, property, One Stop system cost allocation, and program year closeouts. Monthly analyses of reported expenditures are conducted to ensure that local areas are not over or under expending and to determine if spending is commensurate with services provided. Program Specialists use newly revised guides covering Adults, Dislocated Workers, Youth, Summer Youth, Governance and Sub-recipients, as well as monthly desk reviews of services and expenditures.

The State monitoring process results in feedback to the local area, with regard to program performance. Through the use of Local WIA Quarterly Reports and information that includes rosters of individuals in each of the measures, field staff engages local areas in dialogue related to data quality and performance improvement strategies.

New York State will modify its current monitoring policy and procedures to include the use by local areas of 10% of their formula allocation to fund incumbent worker training programs. Monitoring and feedback will continue as described above.

E(ii). Description of the process(es) used to provide notice to any Local Board affected by the waiver;

Should the continuation of and expansion of this waiver be granted, the Department will issue a Technical Advisory (TA) that will be disseminated to Chairpersons of Local Workforce Investment Boards, Chief Elected Officials, WIA Grant Recipients, WIA Fiscal Agents and WIA Local Area Contact Persons. The TA will also be posted on the Workforce New York web site at: http://www.labor.ny.gov/workforcenypartners/wfnyp_index.shtm.

E(iii). Description of the process(es) used to provide any Local Board affected by the waiver an opportunity to comment on the request;

Local Workforce Investment Board (WIB) Chairs, WIB Executive Directors and One- Stop Operators received a copy of the draft waiver request via email. Notice of the waiver request was also published on the Workforce New York Partners home page under the “What’s New” section at: <http://www.labor.ny.gov/workforcenypartners/whatsnew.shtm>. A comment period was allowed. All comments were taken into account when developing the final draft of this request.

E(iv). Description of the process(es) used to ensure meaningful public comment, including comment by business and organized labor, on the waiver.

Notice of the waiver request was posted on the Workforce New York Partners home page on the Department’s web-site under the “What’s New” section at: <http://www.labor.ny.gov/workforcenypartners/whatsnew.shtm>. A comment period was allowed. All comments were taken into account when developing the final draft of this request.

**State of New York
Workforce Investment Act
Waiver Request**

Waiver to Increase the Employer Reimbursement for On-the-Job Training for Small- and Medium-Sized Businesses

The New York State Department of Labor (Department), as the administrative entity of the Workforce Investment Act (WIA) in New York State, submits this request for a general waiver of the requirement that businesses receiving On-the-Job Training (OJT) services under WIA receive a maximum reimbursement of 50% of the newly hired employee's wages during OJT.

The requirement that businesses be allowed a maximum wage reimbursement of 50% for OJT does not provide sufficient incentive for small- and medium-sized businesses to take advantage of OJT during this harsh economic time. Therefore, New York State is requesting a waiver of this requirement, and approval to allow a graduated scale for OJT reimbursement as follows:

1. Up to 90% for businesses with 50 or fewer employees;
2. Up to 75% for businesses with 51 – 100 employees; and
3. Up to 50% (current statutory requirement) for businesses with 101 or more employees.

This waiver will apply to the balance of Program Year 2009 and PY 2010.

A. Statutory or Regulatory Requirements to be Waived

WIA Section 101(31)(B) and 20 CFR 663.700(a), 663.710(b).

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

The goals of the waiver are to: increase the number of individuals receiving OJT; accelerate businesses hiring through OJT; strengthen the labor pool by providing unemployed workers with marketable skills; strengthen the business community by increasing its competitiveness in the global economy, improve the capacity of local boards to market demand-driven services; and to build beneficial relations with a greater number of businesses in the private sector. This waiver request is consistent with the PY 2009-10 WIA/Wagner Peyser State Plan which placed a strong emphasis on increasing the number of individuals who receive training through the One-Stop Career System.

C. State or Local Statutory or Regulatory Barriers

There are no state or local statutory or regulatory barriers to implementing the proposed waiver.

D. Description of the Individuals Impacted by the Waiver

The waiver will accelerate hiring and thus positively impact the population of unemployed workers who are hired through OJT in terms of skill acquisition and family income. In addition,

the waiver will have a positive impact on the State's participating businesses with 100 or fewer employees, the State's workforce, and the State's economy.

E (i). Description of the Process(es) Used to Monitor Implementation of the Waiver

New York State monitors its thirty-three local areas through the Financial Oversight and Technical Assistance (FOTA) Unit and Program Specialists (program monitoring). Financial oversight reviews are conducted in accordance with the FOTA Review Guide and consist of reviews in areas, such as financial management, cost allocation, procurement, property, One-Stop system cost allocation, and program year closeouts. Monthly analyses of reported expenditures are conducted to ensure that local areas are not over or under expending and to determine if spending is commensurate with services provided. Local areas are required to report their OJT expenditures by funding stream, and OJT is tracked as a participant service in our case management system. Program Specialists use newly revised guides covering Adults, Dislocated Workers, Youth, Summer Youth, Governance and Sub-recipients, as well as monthly desk reviews of services and expenditures.

The State monitoring process results in feedback to the local area, with regard to program performance. Through the use of Local WIA Quarterly Reports and information that includes rosters of individuals in each of the measures, Field staff engage local areas in dialogue related to data quality and performance improvement strategies.

Monitoring and feedback of OJT will continue as described above.

E (ii). Description of the Process Used to Provide Notice to Local Boards

Should the waiver be granted, the Department will issue a Technical Advisory (TA) that will be disseminated to Chairpersons of Local Workforce Investment Boards (LWIBs), Chief Elected Officials, WIA Grant Recipients, WIA Fiscal Agents and WIA Local Area Contacts. The TA will also be posted on the Workforce New York web site at:
http://www.labor.ny.gov/workforcenypartners/wfnyp_index.shtm.

E (iii). Description of the Process Used to Provide Local Boards the Opportunity to Comment on the Waiver Request

This request was developed as a result of concerns expressed by Local areas. LWIB Chairs, LWIB Executive Directors and One- Stop Operators received a copy of the draft waiver request via email. Notice of the waiver request was also published on the Workforce New York Partners home page under the "What's New" section at:
<http://www.labor.ny.gov/workforcenypartners/whatsnew.shtm>. A comment period was allowed. All comments were taken into account when developing the final draft of this request.

E (iv). Description of the Process Used to Ensure Meaningful Public Comment

Notice of the waiver request was posted on the Workforce New York Partners home page on the Department's web-site under the "What's New" section at:
<http://www.labor.ny.gov/workforcenypartners/whatsnew.shtm>. A comment period was allowed. All comments were taken into account when developing the final draft of this request.

**State of New York
Workforce Investment Act
Waiver Request**

Discontinue the Collection of Seven of the Data Elements in Section 1 of the WIASRD for Incumbent Workers Trained With WIA Funds

The New York State Department of Labor (Department), as the administrative entity of the Workforce Investment Act (WIA) in New York State, submits this request for a general waiver to permit the State and local areas to discontinue the collection of seven of the data elements in Section 1 of the WIASRD for incumbent workers trained with local area WIA formula funds and State-level 15% or Rapid Response funds. The State seeks to reduce the data collection burden for businesses served under WIA-funded incumbent worker training programs. Many of these businesses have small office staff that are overwhelmed by the reporting, contracting, vouchering and other requirements imposed by the State. Under the waiver, the State would not collect the following WIASRD data 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).

This waiver will apply to the balance of Program Year 2009, Program Year 2010 and subsequent years.

A. Statutory or Regulatory Requirements to be Waived

20 CFR 667.300(a).

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

The goal of the waiver is to reduce the data collection burden for businesses being served under WIA-funded incumbent worker training programs. New York State's WIA/Wagner-Peyser State Plan places an emphasis on strengthening the business community and increasing the number of those enrolled in training, through services such as incumbent worker training programs. This waiver will allow businesses to remain focused on training for the incumbent workers and other requirements rather than data collection.

C. State or Local Statutory or Regulatory Barriers

There are no State or local statutory or regulatory barriers to implementing the proposed waiver.

D. Description of the Individuals Impacted by the Waiver

The waiver will directly impact the staff of the businesses and the Department's reporting and recordkeeping staff.

E(i). Description of the Process(es) Used to Monitor Implementation of the Waiver

New York State monitors its thirty-three local areas through the Financial Oversight and Technical Assistance (FOTA) Unit and Program Specialists (program monitoring). Financial oversight reviews are conducted in accordance with the FOTA Review Guide and consist of reviews in areas, such as financial management, cost allocation, procurement, property, One-Stop system cost allocation, and program year closeouts. Monthly analyses of reported expenditures are conducted to ensure that local areas are not over or under expending and to determine if spending is commensurate with services provided. Local areas are required to track expenditures for incumbent worker training separately in these expenditure reports so that the State can ensure the 10 percent cap permitted under the waiver is not exceeded. Program Specialists use newly revised guides covering Adults, Dislocated Workers, Youth, Summer Youth, Governance and Sub-recipients, as well as monthly desk reviews of services and expenditures. Local areas and the State track services provided to incumbent workers using a special funding flag in the case management system. As such, outcomes for these exiters are easily identified for WIASRD reporting.

The State monitoring process results in feedback to the local area, with regard to program performance. Through the use of Local WIA Quarterly Reports and information that includes rosters of individuals in each of the measures, Field staff engage local areas in dialogue related to data quality and performance improvement strategies.

Monitoring and feedback will continue as described above, with the exception of collecting the seven data elements that are covered by this waiver.

E(ii). Description of the Process Used to Provide Notice to Local Boards

Should the waiver be granted, the Department will issue a Technical Advisory (TA) that will be disseminated to Chairpersons of Local Workforce Investment Boards, Chief Elected Officials, WIA Grant Recipients, WIA Fiscal Agents and WIA Local Area Contact Persons. The TA will also be posted on the Workforce New York web site at:

http://www.labor.ny.gov/workforcenypartners/wfnyp_index.shtm. In addition, the State will modify its reporting instructions for businesses in its procurement processes for State-level incumbent worker training projects.

E(iii). Description of the Process Used to Provide Local Boards the Opportunity to Comment on the Waiver Request

This request was developed as a result of concerns expressed by local areas. Local Workforce Investment Board (WIB) Chairs, WIB Executive Directors and One- Stop Operators received a copy of the draft waiver request via email. Notice of the waiver request was also published on the Workforce New York Partners home page under the "What's New" section at: <http://www.labor.ny.gov/workforcenypartners/whatsnew.shtm>. A comment period was allowed. All comments were taken into account when developing the final draft of this request.

E(iv). Description of the Process Used to Ensure Meaningful Public Comment

Notice of the waiver request was posted on the Workforce New York Partners home page on the Department's web-site under the "What's New" section at:

<http://www.labor.ny.gov/workforcenypartners/whatsnew.shtm>. A comment period was allowed. All comments were taken into account when developing the final draft of this request.

**State of New York
Workforce Investment Act
Waiver Request**

Waiver of the Requirement for a 50 Percent Employer Match for Customized Training, to Permit a Graduated Scale Match to Increase Employer Connections with the One-Stop System

The New York State Department of Labor (Department), as the administrative entity of the Workforce Investment Act (WIA) in New York State, submits this request for a general waiver of the requirement that employers receiving customized training under WIA pay a match of not less than 50 percent of the cost of the training. Small- and medium-sized businesses often lack the resources to take advantage of WIA customized training. These lesser resources are further diminished by the harsh economic times. The Department's experience with incumbent worker training grants has shown that there is tremendous demand in the business community for customized training, but very little capacity, particularly for small business owners, to pay for it. The State is, therefore, requesting the flexibility to apply a graduated scale for customized training as follows: 1) no less than 10% match for businesses with 50 or fewer employees, and 2) no less than 25% match for businesses with 51 – 100 employees. For businesses with more than 100 employees, the current statutory requirements would continue to apply.

This waiver will apply to the balance of Program Year 2009, Program Year 2010 and subsequent years.

A. Statutory or Regulatory Requirements to be Waived

WIA Section 101(8) (C) and 20 CFR 663.715.

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

The goals of the waiver are to increase the number of individuals receiving training services, to increase the number of businesses availing themselves of customized training services, to strengthen the labor pool by providing workers with more marketable skills, to strengthen the business community by increasing its competitiveness in the global economy, to improve the capacity of local boards to market demand-driven services and to build beneficial relations with a greater number of businesses in the private sector. Increasing the number of individuals receiving training services in the One-Stop System is a key goal in New York State's PY 2009-2010 WIA/Wagner-Peyser Strategic Plan.

C. State or Local Statutory or Regulatory Barriers

There are no State or local statutory or regulatory barriers to implementing the proposed waiver.

D. Description of the Individuals Impacted by the Waiver

The waiver will positively impact the WIA participants who will be receiving the training. There will also be a positive impact on the State's businesses, particularly those with 100 or fewer employees, the workforce investment system and the economy of the State.

E(i). Description of the Process(es) Used to Monitor Implementation of the Waiver

New York State monitors its thirty-three local areas through the Financial Oversight and Technical Assistance (FOTA) Unit and Program Specialists (program monitoring). Financial oversight reviews are conducted in accordance with the FOTA Review Guide and consist of reviews in areas, such as financial management, cost allocation, procurement, property, One-Stop system cost allocation, and program year closeouts. Monthly analyses of reported expenditures are conducted to ensure that local areas are not over or under expending and to determine if spending is commensurate with services provided. Customized training expenditures are tracked by funding stream. Participants receiving customized training are tracked in the State's case management system. Program Specialists use newly revised guides covering Adults, Dislocated Workers, Youth, Summer Youth, Governance and Sub-recipients, as well as monthly desk reviews of services and expenditures.

The State monitoring process results in feedback to the local area, with regard to program performance. Through the use of Local WIA Quarterly Reports and information that includes rosters of individuals in each of the measures, Field staff engage local areas in dialogue related to data quality and performance improvement strategies.

Monitoring and feedback on customized training will continue as described above.

E(ii). Description of the Process Used to Provide Notice to Local Boards

Should the waiver be granted, the Department will issue a Technical Advisory (TA) that will be disseminated to Chairpersons of Local Workforce Investment Boards, Chief Elected Officials, WIA Grant Recipients, WIA Fiscal Agents and WIA Local Area Contact Persons. The TA will also be posted on the Workforce New York web site at:

http://www.labor.ny.gov/workforcenypartners/wfnyp_index.shtm.

E(iii). Description of the Process Used to Provide Local Boards the Opportunity to Comment on the Waiver Request

Local Workforce Investment Board (WIB) Chairs, WIB Executive Directors and One-Stop Operators received a copy of the draft waiver request via email. Notice of the waiver request was also published on the Workforce New York Partners home page under the "What's New" section at: <http://www.labor.ny.gov/workforcenypartners/whatsnew.shtm>. A comment period was allowed. All comments were taken into account when developing the final draft of this request.

E(iv). Description of the Process Used to Ensure Meaningful Public Comment

Notice of the waiver request was posted on the Workforce New York Partners home page on the Department's web-site under the "What's New" section at:
<http://www.labor.ny.gov/workforcenypartners/whatsnew.shtm>. A comment period was allowed. All comments were taken into account when developing the final draft of this request.

**State of New York
Workforce Investment Act
Waiver Request**

Requirements for Dislocated Workers Relating to Eligibility for Needs Related Payments

The New York State Department of Labor (NYSDOL), as the administrative entity of the Workforce Investment Act (WIA) in the State of New York, submits this request for a general waiver from the requirements included under WIA Section 134(e)(3)(B)(i) and (ii).

General policy guidelines in Training and Employment Guidance Letter (TEGL) 14-08, *Guidance for Implementation of the Workforce Investment Act and Wagner-Peyser Act Funding in the American Recovery and Reinvestment Act of 2009 and State Planning Requirements for Program year 2009*, clarify that local areas have until the end of PY 2010 (June 30, 2011) to expend WIA Adult and Dislocated Worker Recovery Act funds. Given the high level of extended benefits and the current economic conditions in New York State, it seems we should not turn away a dislocated worker based upon whether or not he/she was enrolled in training services by a certain date. A waiver of the above referenced Section 134 criteria will allow those who are receiving second and third rounds of extended benefits to remain in training, as these workers should not have to drop out of training because they cannot support themselves. This waiver will also facilitate entry to training services for dislocated workers and will enhance the number of dislocated workers who enter training services.

This waiver is requested for the balance of PY 2009, PY 2010 and subsequent years.

A. Statutory or Regulatory Requirements to be Waived

WIA Section 134 (e)(3)(B) states that a dislocated worker may be eligible to receive needs-related payments under this paragraph only if such worker was enrolled in the training services: (i) by the end of the 13th week after the most recent layoff that resulted in a determination of the worker's eligibility for employment and training activities for dislocated workers under this subtitle; or (ii) if later, by the end of the 8th week after the worker is informed that a short-term layoff will exceed 6 months.

B. Goals and Expected Programmatic Outcomes if Waiver is Granted

The main goal that will be achieved through the granting of this waiver is to increase the number of dislocated workers who enter training services and/or continue training services to completion. This waiver will provide additional flexibility to the state and local workforce boards to help those dislocated worker participants whose extended benefits may not provide sufficient financial support to enable them to enroll and complete their training programs. Additional financial support beyond extended benefits might encourage more claimants to consider additional education and training as a strategy to become reemployed more quickly.

Once a dislocated worker has ceased to qualify for unemployment compensation, family subsistence becomes an even greater priority than in previous weeks or months. An anticipated loss of this source of financial support may deter dislocated workers from entering training that could potentially qualify them for higher wages or in-demand occupations. Dislocated workers

in training may be forced to drop out of the training once their unemployment benefits run out.

Dislocated workers who initially pursue job seeking activities are discovering that the recession has contracted career opportunities to the extent that re-training has become a more viable option. Removal of the timing constraints related to the availability of needs-related payments for dislocated workers will not penalize dislocated workers for delayed entry into allowable training services, will facilitate participant choice, and is consistent with the Recovery Act's emphasis on using funds for training activities, supportive services and needs-related payments.

Increasing the number of individuals enrolled in training, and ensuring those enrolled in training are provided with whatever supportive services, including needs based payments, that they might require to successfully complete their training is a major theme in New York State's WIA/Wagner-Peysers Strategic Plan.

C. State or Local Statutory or Regulatory Barriers

There are no state or local statutory or regulatory barriers to implementing the proposed waiver.

D. Description of Individuals Impacted by the Waiver

The waiver will impact dislocated workers enrolled in or contemplating enrollment in WIA training services.

E(i). Description of the process(es) used to monitor the progress in implementing the waiver

In response to the emphasis in the Recovery Act on increasing the number of individuals trained, and to ensure these individuals receive the necessary supportive services and needs-related payments that may be required for them to successfully complete training, NYSDOL is expanding its monthly expenditure report format to have local areas report their training, needs-related payments, and supportive services expenditures. In addition, local areas are being asked to prepare an abbreviated local plan revision that focuses on program changes that are being implemented as a result of the Recovery Act. The planning guidance will require local areas to update their supportive service and needs-related policies and payment structures in light of the programmatic expectations highlighted in TEGL 14-08.

Currently, local areas are provided with quarterly updates on the numbers of individuals being trained since it is tracked for the State's incentive and sanction policy. The numbers of individuals being trained will continue to be tracked and reported so that we will be able to measure the increase in individuals being trained by funding stream (including dislocated workers).

E (ii). Description of the process(es) used to provide notice to any Local Board affected by the waiver;

Should the waiver be granted, the Department will issue a Technical Advisory (TA) that will be disseminated to Chairpersons of Local Workforce Investment Boards, Chief Elected Officials, WIA Grant Recipients, WIA Fiscal Agents and WIA Local Area Contact Persons. The TA will

also be posted on the Workforce New York Partners home page on the Department's web-site at: <http://www.labor.ny.gov/workforcenypartners/tas.shtm>

E (iii). Description of the process(es) used to provide any Local Board affected by the waiver an opportunity to comment on the request;

Local Workforce Investment Board (WIB) Chairs, WIB Executive Directors and One- Stop Operators received a copy of the draft waiver request via email. Notice of the waiver request was also published on the Workforce New York Partners home page under the "What's New" section at: <http://www.labor.ny.gov/workforcenypartners/whatsnew.shtm>. A comment period was allowed. All comments were taken into account when developing the final draft of this request.

E (iv). Description of the process(es) used to ensure meaningful public comment, including comment by business and organized labor, on the waiver.

Notice of the waiver request was posted on the Workforce New York Partners home page on the Department's web-site under the "What's New" section at: <http://www.labor.ny.gov/workforcenypartners/whatsnew.shtm>. A comment period was allowed. All comments were taken into account when developing the final draft of this request.

**State of New York
Workforce Investment Act
Waiver Request**

Inclusion of Youth Follow-Up Services and Work Experience as a Youth Program Framework Service

The New York State Department of Labor (NYSDOL), as the administrative entity of the Workforce Investment Act (WIA) in the State of New York, submits this request for a general waiver to allow follow-up services and work experience to be provided as part of the youth program design framework services, without need for a separate competitive procurement process.

Section 123 of WIA stipulates that eligible providers of youth services be selected by awarding a grant or contract on a competitive basis. Part 664.405 of the WIA Regulations further clarifies that this competitive procurement requirement does not apply to the design framework component, such as services for intake, objective assessment and the development of individual service strategy, when these services are provided by the grant recipient/fiscal agent. Section 129 (c)(2) lists the ten program elements that shall be provided to youth through eligible youth programs. Part 664.410 of the WIA Regulations further states that local programs must make these elements available to youth participants; and local programs have the discretion to determine what specific program services will be provided to a youth participant based on each participant's objective assessment and individual service strategy..

Grant recipient/fiscal agents that are already providing framework services to youth (as allowed under 664.405) are in a better position to also provide follow-up services and work experience to these same youth. These grant recipients/fiscal agents have case managed the youth, so they can better identify appropriate follow-up services; they have also developed strong working relationships with public and private sector employers by administering the summer employment opportunities element of the youth program. The requirement of an additional competitive bidding process for follow-up services and work experience is duplicative and burdensome. This waiver would create a more streamlined and cohesive approach to service strategy development and case management by allowing these providers of youth framework services to provide personal attention to each youth on a consistent basis throughout their period of participation and beyond.

Providing a greater continuity of service, greater monitoring of progress, and further supporting the needs of each youth participant based on their individual service strategy will allow New York State to develop and strengthen, through education and training, a highly skilled workforce. This is consistent with New York State's WIA/Wagner-Peyser Strategic Plan

This waiver request is a continuation and an expansion of a previously approved waiver for the inclusion of follow-up services and will apply to the balance of Program Year 2009, Program Year 2010 and subsequent years.

A. Statutory or Regulatory Requirements to be Waived

WIA Section 123, and 20 C.F.R. Part 664.405 which require that eligible providers of youth services be selected by awarding a grant or contract on a competitive basis for all youth activities and services. This waiver would apply to the selection of providers for the youth elements under the following sections: section 129(c)(2)(D) paid and unpaid work experience, including internships and job shadowing, as appropriate; and section 129(c)(2)(I) follow-up services for not less than 12 months after the completion of participation, as appropriate.

B. Goals and Expected Programmatic Outcomes if Waiver is Granted

A waiver will maximize resources by allowing grant recipient/fiscal agent staff who are already providing framework services to provide follow-up services and work experiences to youth, instead of requiring a separate competitive bidding process. Granting the waiver will allow for greater continuity of service and monitoring of progress of the youth as they move through the various services identified within their individual service strategies. This continuity of service will enhance our ability to understand the needs of each participant and better meet those needs. Granting the waiver 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. This service delivery method will foster a strong connection that will be maintained throughout the duration of program enrollment.

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. Allowing work experience to be defined as a framework service will further support the needs of the particular youth participant. The framework service provider will be able to determine what a youth participant needs according to the participant's objective assessment and individual service strategy. This will allow a participant to have a work experience that is clearly tailored to the individual's needs and therefore further benefit the youth participant.

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.

E (i). Description of the process(es) used to monitor the progress in implementing the waiver

New York State monitors its thirty-three local areas through the Financial Oversight and Technical Assistance (FOTA) Unit and Program Specialists (program monitoring). Financial oversight reviews are conducted in accordance with the FOTA Review Guide and consist of reviews in areas, such as financial management, cost allocation, procurement, property, One Stop system cost allocation, and program year closeouts. Monthly analyses of reported expenditures are conducted to ensure that local areas are not over or under expending and to determine if spending is commensurate with services provided. Program Specialists use newly revised guides covering Adults, Dislocated Workers, Youth, Summer Youth, Governance and Sub-recipients, as well as monthly desk reviews of services and expenditures.

The State monitoring process results in feedback to the local area, with regard to program performance. Through the use of monthly dashboard and Local WIA Quarterly Reports and information that includes rosters of individuals in each of the measures, Field staff engage local areas in dialogue related to data quality and performance improvement strategies. Follow-up and work experience services provided by grant recipients/fiscal agents will be tracked as such in the case management system.

New York State will modify its current monitoring policy and procedures to include the waiver to allow follow-up services and work experience to be provided as youth program framework services as described in this request. Monitoring and feedback will continue as described above.

E. (ii). Description of the process(es) used to provide notice to any Local Board affected by the waiver;

Should the continuation of and expansion of this waiver be granted, the Department will issue a Technical Advisory (TA) that will be disseminated to Chairpersons of Local Workforce Investment Boards, Chief Elected Officials, WIA Grant Recipients, WIA Fiscal Agents and WIA Local Area Contact Persons. The TA will also be posted on the Workforce New York web site at: http://www.labor.ny.gov/workforcenypartners/wfnyp_index.shtm.

E. (iii). Description of the process(es) used to provide any Local Board affected by the waiver an opportunity to comment on the request;

Local Workforce Investment Board (WIB) Chairs, WIB Executive Directors and One- Stop Operators received a copy of the draft waiver request via email. Notice of the waiver request was also published on the Workforce New York Partners home page under the "What's New" section at: <http://www.labor.ny.gov/workforcenypartners/whatsnew.shtm>. A comment period was allowed. All comments were taken into account when developing the final draft of this request.

E. (iv). Description of the process(es) used to ensure meaningful public comment, including comment by business and organized labor, on the waiver.

Notice of the waiver request was posted on the Workforce New York Partners home page on the Department's web-site under the "What's New" section at:

<http://www.labor.ny.gov/workforcenypartners/whatsnew.shtm>. A comment period was allowed.

All comments were taken into account when developing the final draft of this request.