U.S. Department of Labor

Assistant Secretary for
Employment and Training
Washington, D.C. 20210

JUN 15 2012

The Honorable Edmund G. Brown
Governor of California
State Capitol
Sacramento, California 95814

Dear Governor Brown:

This letter provides approval of an extension of California's current Workforce Investment Act (WIA) and Wagner-Peyser Act (W-P) State Plan for a portion of Program Year (PY) 2012. This letter also provides approval of extensions for California's current waivers. Training and Employment Guidance Letter (TEGL) No. 21-11, issued on March 27, 2012, provides guidance for states to secure approval of their WIA/W-P State Plans and waivers for PY 2012. In accordance with TEGL No. 21-11 and your extension request, the State must submit a full five-year WIA/W-P State Plan and annual W-P Agricultural Outreach Plan by September 15, 2012.

Extension of State Plan

California's existing State Plan will expire on June 30, 2012. This letter constitutes a written determination under WIA Section 112 (29 USC 2822) that the Employment and Training Administration (ETA) is temporarily extending the approval of California's State Plan for WIA Title I and the Wagner-Peyser Act into PY 2012, for the period July 1, 2012 through December 31, 2012. The State already received its formula allotment for the WIA Youth program for PY 2012. The State is eligible to receive WIA formula allotments for the Adult and Dislocated Worker programs under the PY 2012 Annual Funding Agreement. The W-P Annual Funding Agreement on PY 2012/Fiscal Year 2013 will provide the W-P Act initial base allocation of PY 2012 funds.

Performance Levels

California requested to temporarily extend its existing PY 2011 WIA and W-P performance goals for a portion of PY 2012. ETA has incorporated these performance goals, identified as PY 2012 performance goals, into the Regional and National Office copies of the State Plan. Please include these PY 2012 goals in the State's official copy of the State Plan. As required by TEGL 21-11, the state must renegotiate its new PY 2012 goals upon submission of its full State Plan.

Waivers

As part of the State's extension of the WIA/W-P Act State Plan, and as described in TEGL No. 21-11, the State requested temporary extensions of California's PY 2011 waivers of statutory and regulatory requirements under WIA for PY 2012. The disposition of the State's waiver extensions is outlined below. This action is taken under the Secretary's authority at WIA Section 189(i) to waive certain requirements of WIA Title I, Subtitles B and E, and Sections 8-10 of the Wagner-Peyser Act.

Waiver of WIA Section 133(b)(4) to increase the allowable transfer amount between Adult and Dislocated Worker funding streams allocated to a local area.

The State was previously granted a waiver to permit an increase in the amount a state is allowed to transfer between the Adult and Dislocated Worker funding streams. The State is granted an extension of this waiver through December 31, 2012. Under the waiver, transfer authority is limited to 50 percent. This limitation provides states flexibility while ensuring consistency with Congressional intent regarding the level of funding appropriated for the WIA Adult and Dislocated Worker programs.

Waiver to permit 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 December 31, 2012.

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. Workforce Investment Act Standardized Record Data system (WIASRD) item 619, Type of Recognized Credential, should be completed for each individual as appropriate, regardless of this waiver to report on common performance measure outcomes only.

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

The 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 December 31, 2012. Under the waiver, the following sliding scale is permitted: 1) no less than 10 percent match for employers with 50 or fewer employees, and 2) no less than 25 percent match for employers with 51-250 employees. For employers with more than 250 employees, the current statutory requirements (50 percent contribution) continue to apply. When determining the funding source for customized training, the State must use the appropriate program funds for the appropriate WIA-eligible population. The State and local area may provide customized training to individuals 18 years of age or older with WIA Adult funds and must provide priority to low-income individuals when funds are limited; the State and local area may provide customized training to dislocated workers with WIA Dislocated Worker funds. Customized training provided with statewide funds must serve WIA eligible individuals.

Waiver of the provision at 20 CFR 663.530 that prescribes a time limit on the period of initial eligibility for training providers.

The 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 December 31, 2012. 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 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 December 31, 2012. Under this waiver, the State is 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 layoff 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 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.

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 December 31, 2012. 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 layoff 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 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.

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 December 31, 2012. Under the waiver, the following reimbursement amounts will be permitted: 1) up to 90 percent for employers with 50 or fewer employees, and 2) up to 75 percent for employers with 51-250 employees. For employers with more than 250 employees, the current statutory requirements (50 percent reimbursement) will continue to apply. When determining the funding source for on-the-job training, the State must use the

appropriate program funds for the appropriate WIA-eligible population. The State and local area may provide on-the-job training to individuals 18 years of age or older with WIA Adult funds and must provide priority to low-income individuals when funds are limited; the State and local area may provide on-the-job training to dislocated workers with WIA Dislocated Worker funds. On-the-job training provided with statewide funds must serve WIA eligible individuals.

Waiver of 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 youth and out-of-school youth program participants. The State is granted an extension of this waiver through December 31, 2012. Under this waiver, the State can use ITAs for older youth and out-of-school youth program participants. The State must continue to make the 10 youth program elements available as described at WIA Section 129(c)(2). The State should ensure that funds used for ITAs are tracked and that the ITAs are reflected in the individual service strategies for these youth.

Waiver of WIA Section 129(b)(2)(C) and 20 CFR 665.200(h) to exempt the state from the requirement to provide additional assistance to local areas that have a high concentration of eligible youth.

The State was previously granted a waiver of the requirement to provide additional assistance to local areas that have a high concentration of eligible youth. The State is granted an extension of this waiver through December 31, 2012.

Waiver of WIA Section 134(a)(2)(B)(ii) and 20 CFR 665.200(d)) to exempt the state from the requirement to conduct evaluations.

The State was previously granted a waiver of the requirement to conduct evaluations of workforce investment activities for adults, dislocated workers, and youth in order to establish and promote continuous improvement of the statewide workforce investment system. The State is granted an extension of this waiver through December 31, 2012.

Waiver of WIA Section 134(a)(2)(B)(iii) and 20 CFR 665.200(e) to exempt a state from the requirement to provide local workforce investment area incentive grants.

The State was previously granted a waiver of the requirement to provide local workforce investment areas incentive grants to reward regional cooperation, local coordination of activities, and exemplary performance. The State is granted an extension of this waiver through December 31, 2012.

Summer Youth Employment Waivers

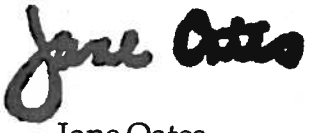
On May 11, 2012 ETA approved California's request for two waivers to increase subsidized employment opportunities for low-income youth co-enrolled in the WIA Youth Program and the Temporary Assistance for Needy Family (TANF) Program. The approval of the following waivers remains effective from May 1, 2012 through September 30, 2012:

- Waiver of performance measures for youth participants in summer youth employment activities and co-enrolled in TANF and WIA programs.
- Waiver to provide program design flexibility in serving youth participants in summer youth employment activities and co-enrolled in TANF and WIA programs.

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 described in TEGL No. 29-11, the State should address the impact that 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 receiving your full State Plan for PY 2012 and working together as you implement your State workforce strategies. If you have any questions related to the issues discussed above, please contact Carol Padovan the Federal Project Officer for California, at 415-625-7946 or Padovan.Carol@dol.gov.

Sincerely,



Jane Oates
Assistant Secretary

Enclosure

cc: Todd Yamamoto, Acting Regional Administrator, ETA San Francisco Regional Office
Carol Padovan, Federal Project Officer for California

Fleck, Heather - ETA

From: Patterson, Daniel@CWIB [Daniel.Patterson@cwib.ca.gov]
Posted At: Tuesday, April 10, 2012 6:07 PM
Conversation: CA Requests Temporary Extension of State WIA\WP Plan and Waivers -- TEGL 21-11
Posted To: WIA.PLAN

Subject: CA Requests Temporary Extension of State WIA\WP Plan and Waivers -- TEGL 21-11

In accordance with TEGL 21-11, Section 10A, California seeks a temporary extension of its current WIA\W-P State Plan and current negotiated performance targets into PY 2012.

The new Plan will be submitted no later than September 15, 2012.

The following documents are also attached in support of this request:

- A list of currently approved waivers we would like to extend (Attachment 1)
- Justification which describes how the added time will be used for greater involvement of partners in the state's planning process (Attachment 2)

If you have any questions or need additional information please contact me at daniel.patterson@cwib.ca.gov or the number cited below.

Thank you,

Danny

Daniel K. Patterson

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Attachment 1

Justification for Temporary Plan Extension

During the past 12 months there has been a renewed focus and emphasis placed by the Governor's administration on the development of California's talent pipeline and the role of the state and local workforce investment boards. The Governor has also provided the framework for this change through the enactment of legislation to ensure greater accountability and increased performance outcomes from California's workforce system.

The declining availability of state and federal resources has also required an even greater level of cooperation and joint planning among the workforce systems champions from the California Department of Education, Chancellor's Office of California's Community College System, Health and Human Services Agency and Labor and Workforce Development Agency.

This 75 day extension will allow for a very deliberate and meaningful planning process among these entities. A recently completed audit of WIA activities by the Bureau of State Audits concluded that the State Board must develop a plan consistent with enacted state statutes. This Plan revision will incorporate the components required by these state statutes. The State Board has already initiated discussions with these partners to ensure a common system vision is jointly developed, priorities and goals established and that resources are effectively invested and leveraged.

California seeks to maximize the opportunity of this planning cycle to ensure that our State Plan provides the necessary policy framework for public investment in developing and renewing our national and global competitiveness, through development of our workforce.

State of California
Workforce Investment Act Request for Extension of Current Waivers for the Period of July 1, 2012 - June 30, 2013

The California Workforce Investment Board requests a one-year extension of all eight (8) of the currently approved waivers included in California's Strategic Plan for Title I of the WIA of 1998 and the Wagner-Peyser Act. In addition, there are three waivers pending approval by the Department of Labor. Those waivers are also included in this request with the presumption that they will be approved. The individual waiver extension requests are as follows:

1. Subsequent Eligibility of Training Providers WIA Section 122(c) and CFR 663.530

This waiver request continues the suspension of subsequent eligibility certification requirements of WIA Section 122(c). Section 122 of the WIA requires states to establish a list of providers who are eligible to receive WIA funds for training services provided to adults and dislocated workers and establish two separate procedures for the Eligible Training Provider List (ETPL): initial eligibility and subsequent eligibility.

Recently enacted state legislation established the Bureau of Private Postsecondary Education that requires the submission of performance data for each individual who attends a private postsecondary education training program, whether or not these individuals' training was funded by WIA. The State Board is developing a policy that will implement the subsequent eligibility determination during Program Year 2012-13 in concert with the provisions of this Act.

At this time, the performance reporting requirements for "publicly funded" educational institutions are an impediment to the participation of the State's educational system on the ETPL. As such, the primary goal in requesting the extension of the waiver is to continue to increase the availability of publicly funded training programs and the accountability of training providers so to enhance the customer choice and the use of Individual Training Accounts (ITA), and to allow the State Board to opportunity to clarify its initial eligibility policy and establish a subsequent eligibility policy.

2. Youth WIA Dollars to fund Individual Training Accounts for Older Youth 20 CFR 664.510

A youth is defined in WIA as those being between the ages of 14-21 years of age. As such, the older youth participant may be served as a youth, adult, or dislocated worker. 20 CFR 664.510 restricts the use of Individual Training Accounts to those 19 yrs and above.

This waiver of 20 CFR 664.510 continues to help maximize the service capacity of the One-Stop Career Centers by allowing the use of Youth funds to serve older youth, who are focused on employment, to have the same advantage of ITAs as adult and dislocated workers. Without this waiver, the workforce system would be forced to co-enroll older youth in the adult and dislocated worker programs to provide training opportunities through the use of ITAs. The continuation of this waiver streamlines customer service and administrative effort to serve these youth.

3. Use of Local Formula Funds for Incumbent Worker Training WIA Section 134(a)

A majority of the WIA Adult, Dislocated Worker and Youth funds are provided to the local areas based on a formula allocation. The uses of these formula funds do not include providing incumbent worker training. That activity is reserved for other WIA funds reserved by the Governor to provide statewide activities.

The waiver of WIA Section 134 allows Local Boards to use up to 10 percent of local formula Adult funds and 10 percent of dislocated worker funds for incumbent worker training, allowing them to respond better to local economic changes and serving employers and their employees who require training. During the national economic downturn, the Local Boards need this flexibility to assist employers retain employees and to provide incumbent workers the opportunity to gain necessary skills to maintain employment.

By continuing this waiver, the Local Boards will be able to effectively market incumbent worker training to the private sector, thus expanding partnerships with employers in growth and demand industries.

This will reduce the risk of layoffs of employees who need skill upgrades and allow employers to create opportunities for new workers to take the place of existing workers who have moved up the career ladder.

4. Transferability of Adult and Dislocated Worker Formula Funds WIA 133(b)(4)

WIA Section 133(b)(4) restricts the amount of funds to be transferred between the Adult and Dislocated Worker funding streams to a maximum of 20 percent. The waiver authorizes the transfer of up to 50 percent of funds between the Adult and the Dislocated Worker funding streams.

This waiver will continue to provide needed flexibility to Local Boards to respond to changes in their local labor markets and will help ensure that WIA funds are used in a way that maximizes customer service and other demand-driven needs of the business community. The need for this waiver is critical given the current economic shifts occurring in our state.

5. Customized Training Sliding Scale

WIA Section 101(8)(C), restricts the amount of funds to be used to provide customized training at 50 percent. Many small businesses that may find it difficult if not impossible to provide a full 50 percent match. In California, a majority of private sector employment is provided by small businesses. This waiver, along with the waiver of Section 134, will continue to provide a valuable tool to local boards in their support of California's small businesses and their employees. The sliding scale for employer match provides the necessary flexibility for small businesses to participate in the WIA customized training program, thereby increasing participation and employment rates for skilled job seekers. Employers benefit from the waiver by having a labor pool with the marketable skills they require.

The waiver allows the following sliding scale to be used to determine the employer's matching requirement: 1) no less then 10 percent match for employers with 50 or fewer employees, and 2) no less than 25% match for employers with 51-250 employees. For employers with more than 250 employees, the 50 percent contribution continues to apply.

6. Common Measures

WIA Section 136(b) requires states to report 17 performance measures for the Workforce Investment Act Title 1B programs. This waiver of WIA 136(b) authorizes the State to report the Department of Labor (DOL) Common Measures, which were developed through a Presidential mandate to measure performance across federal programs that had similar goals.

See Attachment 1 for a more detailed explanation of which WIA performance measures are either no longer being reported (pursuant to the approved waiver request) or are being consolidated. The enactment of Senate Bill 698 "High Performing Boards" requires the development of additional performance metrics which will assist policy makers and stakeholders in evaluating overall performance of the local boards in addition to those elements required by the DOL.

The key elements of the proposed waiver request include:

- Combining performance measurement of clients served with Adult and Dislocated Worker WIA funds;
- Using a single set of measures for clients served through the Youth funding stream, thus eliminating Older Youth as a sub-population for the purpose of the performance measurement;
- Eliminating the credential measure for Adults and Dislocated Workers; and
- Eliminating the customer satisfaction measurement system required by DOL.

7. **Rapid Response funds for Incumbent Worker Training for Lay-Off Aversion Waiver of Section 133(b)(1).**

Fifty percent of WIA Rapid Response funds are provided to the local workforce investment areas by formula allocation. These funds are used locally to provide information and assistance to workers who have been dislocated due mass layoffs or a plant closure. This waiver allows Local Boards, at their discretion, to use up to 20 percent (20%) of Rapid Response funding for adults and dislocated workers [WIA Section 133(b)] to carry out Incumbent Worker Training programs specifically for layoff aversion at the Local Area level.

This waiver positively affects businesses by reducing the risk of layoff or closure because workers have not kept current with new skills and technologies. It also has the potential, as businesses expand due to the enhanced skills of their current workers, to stimulate new, lower-skill positions and to create openings in positions vacated by incumbent workers who receive skills upgrade training. The training provided to individuals will make them more valuable to current and future employers. This waiver plan increases the role Local Boards as workforce intermediary and the role of business in the workforce development system.

8. **Employer Reimbursement for On-the-Job Training – Section 101(31)(B)**

WIA Section 101(31)(B) defines on-the-job training (OJT) and restricts the amount of wage reimbursement authorized at 50 percent. This waiver increases flexibility in the use of WIA formula funds by permitting up to 90 percent reimbursement of the extraordinary costs of OJT. Reimbursement would be provided on a sliding scale based on employer size: up to 90% for employers with 50 or fewer employees; up to 75% for employers with 51 to 250 employees; for employers with 251 or more employees, reimbursement would remain at the 50% statutory level.

The waiver is similar to the "Customized Training Sliding Scale" waiver (number five herein) but applies specifically to OJT – where the individual being trained is engaged in productive work while simultaneously gaining the skills needed to meet the employer's needs. It will provide unemployed adults and dislocated workers with opportunities to add new skill sets and learn new technologies while they return to the workplace and earn wages to support themselves and their families.

9. **Waiver of Mandatory WIA Activities – Evaluations**

WIA Section 134(a)(2)(B)(ii) and 20 CFR 665.200(d) requires the state to conduct evaluations of workforce investment activities for adults, dislocated workers, and youth. The reduction to five percent in the WIA allotment for Program Year 2011 Governor's Reserve funds restricts the state's ability to effectively fund and carry out all of the required statewide workforce investment activities.

10. Waiver of Mandatory Activities – Incentive Grants to Local Areas

Waiver of WIA Section 134(a)(2)(B)(iii) and 20 CFR 665.200(e) requires the provision of incentive grants to local areas. The reduction to five percent in the WIA allotment for Program Year 2011 Governor's Reserve funds restricts the state's ability to effectively fund and carry out all of the required statewide workforce investment activities.

11. Waiver of Mandatory Activities – High Concentration of Youth Grants

WIA Section 129(b)(2)(C) and 20 CFR 665.200(h) requires the provision of additional assistance to local areas that have a high concentration of eligible youth. Due to the reduction to five percent in the WIA allotment for Program Year 2011 Governor's Reserve funds restricts the state's ability to effectively fund and carry out all of the required statewide workforce investment activities. This waiver was submitted on February 3, 2012 for PY 2011-12. If this waiver is approved, we request it be extended for an additional year.