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U.S. Department of Labor

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

*Wilkinson*  
*Act: Wilkinson*



SEP 2 - 2014

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GOVERNOR'S OFFICE

The Honorable James Richard Perry  
Governor of Texas  
Office of the Governor  
P.O. Box 12428  
Austin, Texas 78711-2428

Dear Governor Perry:

The Employment and Training Administration (ETA) is responding to your request for a waiver of statutory and regulatory requirements under the Workforce Investment Act (WIA). This action is taken under the Secretary's authority to waive certain requirements of WIA Title I, Subtitles B and E, and sections 8-10 of the Wagner-Peyser Act. On July 22, 2014, the Workforce Innovation and Opportunity Act (WIOA) was enacted. Many of WIOA's provisions take effect on July 1, 2015, but the existing WIA state and local plan provisions remain in effect until July 1, 2016. ETA is conducting a review of WIOA's implementation timeline and provisions, and will be issuing guidance in the future regarding the new State Unified Plan provisions and waivers as part of its implementation actions. Current WIA waiver approval timelines have been adjusted in accordance with the expected end date (June 30, 2016) for the existing WIA State Plans.

The State's recent WIA waiver request is written in the format identified in WIA section 189(i)(4)(B) and 20 CFR 661.420(c). The following is the disposition of the State's waiver request (copy enclosed).

Waiver of WIA Section 129 and 134(a) to permit local areas to use a portion of local funds for incumbent worker training and other statewide activities.

The State is currently approved for a waiver of WIA Section 134(a) to allow the use of local funds for incumbent worker training (IWT) within the context of layoff aversion. The State recently requested to expand this waiver to allow the use of local funds for any allowable statewide activity, allow a portion of local WIA Youth funds to be used for statewide activities, and to remove the layoff aversion requirement when using local funds for IWT.

The State is partially granted this waiver through June 30, 2016. 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 to conduct incumbent worker training for the career advancement of incumbent low-wage, low-skilled workers, or incumbent worker training for the purposes of layoff aversion. ETA believes limiting incumbent worker training to the specified level is the best use of funds in the current economic climate where serving unemployed workers is a

paramount responsibility of the workforce system. The State also requested the use of local Adult, Dislocated Worker, and Youth funds to permit local areas to conduct other statewide activities for the purpose of innovative training and service delivery approaches. ETA denies the portion of the waiver request to fund other statewide activities. ETA believes maximizing the use of formula funding at the local level for local WIA activities is the best use of those funds in the current economic climate.

When implementing the approved portion of this waiver, the following conditions apply:

- 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).
- State or local policies related to this waiver should establish criteria for determining the provision of IWT under the waiver, such as:
  - how businesses will be identified, i.e. what indicators the State or local area will use to determine that the business has career advancement opportunities in place for low-skilled, low-wage workers; and/or
  - any targeted industries and economic sectors that have known career pathways and career advancement opportunities for low-skilled, low-wage workers.
- 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 and any credentials received by individuals served under this waiver in the WIASRD field 619.
- In its WIA Annual Report, the State should report on how this waiver impacted outcomes in support of job-driven training principles, as well as indicators the State will use to track employer and participant outcomes

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. ETA will provide additional information regarding this waiver and its implementation in a forthcoming TEGL. Please consult this TEGL to inform your implementation and conformity to requirements.

The approved waiver modification is incorporated by reference into the State's WIA Grant Agreement, as provided for under paragraph 3 of the executed Agreement, and this constitutes a modification of the State Plan. A copy of this letter should be filed with the State's WIA Grant Agreement and the approved State Plan. In addition, as required by TEGL No. 06-13, the State should address the impact this waiver has had on the State's performance in the WIA annual performance report, due on October 1 of each year.

We look forward to continuing our partnership with you and achieving better workforce outcomes. If you have any questions related to the issues discussed above, please contact Kajuana Donahue, the Federal Project Officer for Texas, at (972) 850-4613 or [donaue.kajuana@dol.gov](mailto:donaue.kajuana@dol.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Portia Wu", with a stylized flourish at the end.

Portia Wu  
Assistant Secretary

Enclosure

cc: Nicholas Lalpui, Regional Administrator, ETA Dallas Regional Office  
Kajuana Donahue, Federal Project Officer for Texas

# Texas Workforce Commission

A Member of Texas Workforce Solutions

Andres Alcantar, Chairman  
Commissioner Representing  
the Public

Ronald G. Congleton  
Commissioner Representing  
Labor

Tom Pauken,  
Commissioner Representing  
Employers

Larry E. Temple  
Executive Director

April 30, 2014

Mr. Nicholas E. Lalpui  
Regional Administrator, Region IV  
US Department of Labor  
Employment and Training Administration  
A. Maceo Smith Federal Building  
525 Griffin Street, Room 317  
Dallas, Texas 75202

Dear Mr. Lalpui:

On behalf of the Texas Workforce Commission (TWC), the state operational entity for the Title I Workforce Investment Act (WIA), I respectfully request approval of the enclosed waiver requests for the State of Texas. The waivers were developed in accordance with 20 CFR §§661.400–661.420, and the US Department of Labor (DOL) Employment and Training Administration's Training and Employment Guidance Letter No. 9-11.

TWC is requesting waivers of the requirements of:

- WIA §134(a)(2)(B)(iii) and 20 CFR §665.200(e), regarding the provision of incentive grants to local workforce development areas (workforce areas); and
- WIA §129(b)(2)(C) and 20 CFR §665.200(h), regarding the provision of additional assistance to workforce areas with high concentrations of eligible youth.

In Program Year 2011 (PY'11), Congress decreased the amount of funding for statewide activities from 15 percent to 5 percent. The Consolidated Appropriations Act of 2014, signed into law January 17, 2014, partially restores funding for statewide activities to 8.75 percent for PY'14. This is a welcome increase; however it is still less than the 15 percent established by law when all required activities were set. TWC's goal in seeking these waivers is to ensure that the state can prioritize use of funds in the governor's reserve for the required activities deemed most essential to the basic functions of the workforce investment system, which may be insufficient to cover the cost of:

- incentive grants to workforce areas; and
- providing additional assistance to workforce areas with high concentrations of eligible youth to ensure that youth most in need are prioritized within each workforce area's WIA youth allocation.

TWC acknowledges that in the event the governor's reserve is restored to the full 15 percent, DOL may withdraw approval of these waivers.

We appreciate the opportunity to submit these waiver requests and look forward to receiving the Secretary's approval. If you have questions or require additional information, please contact

Nicholas E. Lalpui

Page 2

April 30, 2014

Debbie Carlson, Director, Workforce Program Policy and Services for Dislocated Workers, at  
(512) 463-2675.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry E. Temple". The signature is written in a cursive style with a large, sweeping initial "L".

Larry E. Temple  
Executive Director

Enclosures (2)

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**STATE OF TEXAS  
WORKFORCE INVESTMENT ACT  
HIGH CONCENTRATIONS OF YOUTH WAIVER REQUEST**

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**BACKGROUND**

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The Workforce Investment Act (WIA) §128(a) requires states to reserve no more than 15 percent of each of the amounts allotted to the state under WIA §127(b)(1)(C) and paragraphs (1)(B) and (2)(B) of WIA §132(b) for a fiscal year for statewide workforce investment activities. In Program Year 2011 (PY'11), Congress decreased the amount of funding for statewide activities by 10 percent—from 15 percent to 5 percent. The Consolidated Appropriations Act of 2014, signed into law January 17, 2014, partially restores funding for statewide activities to 8.75 percent, for PY'14. Although this is a welcomed increase, it is still less than the original 15 percent established by law when all required activities were set.

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**PROVISIONS TO BE WAIVED**

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WIA §129(b)(2)(C) and 20 CFR §665.200(h), which require the provision of additional assistance to workforce areas that have high concentrations of eligible youth.

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**ACTIONS UNDERTAKEN TO REMOVE STATE OR LOCAL BARRIERS**

There are no state or local barriers.

**GOALS AND EXPECTED PROGRAMMATIC OUTCOMES OF WAIVER**

The continued reduction from the original 15 percent in the WIA allotment for the governor's reserve funds restricts the state's ability to effectively fund and carry out all of the required statewide WIA activities. The current funding level in the governor's reserve is insufficient to cover the cost of providing additional assistance to workforce areas that have high concentrations of eligible youth.

The state's reduced funds are being used for the following required activities:

- Carrying out statewide rapid response activities
- Disseminating TWC's list of Eligible Training Providers
- Conducting evaluations
- Providing technical assistance to workforce areas
- Assisting in the establishment and operation of the one-stop delivery system
- Operating fiscal and management accountability information systems

TWC's goal in seeking this waiver is to ensure that the state can prioritize the use of governor's reserve funds for the required activities deemed most essential to the basic functions of the workforce investment system.

**INDIVIDUALS AFFECTED BY THE WAIVER**

The waiver will provide TWC with more flexibility in directing governor's reserve funds to those activities that best preserve basic functions of the statewide workforce investment system.

1 **PROCESS FOR MONITORING PROGRESS IN IMPLEMENTATION**

2 TWC will monitor progress and ensure accountability for federal funds in connection  
3 with this waiver by reviewing monthly expenditure, performance, and other reports  
4 through regular contact with the US Department of Labor Employment and Training  
5 Administration's regional office liaisons, and through TWC's monitoring and  
6 performance accountability system.

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8 **NOTICE TO AFFECTED LOCAL WORKFORCE DEVELOPMENT BOARDS**

9 The waiver request was discussed during the April 4, 2014, conference call with the  
10 Local Workforce Development Boards.

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12 **PUBLIC COMMENT**

13 The waiver request was presented at TWC's April 3, 2014, public meeting and posted to  
14 the TWC website for review and comment. No comments were received.

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**STATE OF TEXAS  
WORKFORCE INVESTMENT ACT  
INCENTIVE GRANTS WAIVER REQUEST**

**BACKGROUND**

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**PROVISIONS TO BE WAIVED**

WIA §134(a)(2)(B)(iii) and 20 CFR §665.200(e) requiring provision of incentive grants to workforce areas.

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There are no state or local barriers.

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