

**U.S. Department of Labor**

Employment and Training Administration  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210



**MAY 19 2009**

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

Dear Governor Patrick:

The Employment and Training Administration (ETA) is pleased to be able to respond positively to your request for waivers 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. The requests are written in the format identified in WIA section 189(i)(4)(B) and 20 CFR 661.420(c), and appear to meet the standard for approval at 20 CFR 661.420(e). The following is the disposition of the State's submission (copy enclosed). The State also submitted proposed levels of performance and additional waiver requests, which ETA will respond to under separate cover.

(1) Requested Waiver: Waiver of the requirement under WIA section 123 and 20 CFR 664.610 regarding competitive selection of providers of youth activities.

The State has requested a waiver of the requirements under WIA section 123 and 20 CFR 664.610, stating that providers of summer youth employment opportunities must be selected by awarding a grant or contract on a competitive basis. Massachusetts seeks the waiver to allow local areas to use local procedures to expand existing contractual relationships with existing WIA youth service providers by a set percentage through a companion contract for the specific use of Recovery Act funding allocated for 2009 WIA youth summer employment.

When submitting a waiver request, states must provide detailed justification for the waiver, describe reasonable accountability safeguards against unfair procurement practices, assure compliance with state and local procurement laws and policies, and describe how states will publicly announce summer employment providers, as indicated by the transparency provisions in the

Recovery Act. See ETA Training and Employment Guidance Letter (TEGL) No. 14-08, Section 19, issued on March 18, 2009. The State's written request meets the ETA requirements outlined above. The waiver is intended to allow the State to select as quickly as possible the service providers necessary to develop and implement summer youth employment opportunities for the summer of 2009. The requested waiver is granted through September 30, 2009 to permit the use of state and local procedures to provide companion contracts to existing competitively procured contracts. Local areas must adhere to state and local procurement requirements when the companion contract procures services that are different than those procured through the original contract. The state must also publicly announce summer employment providers, as indicated by the transparency provisions in the Recovery Act, and described in TEGL 14-08.

The waiver is only applicable to WIA Youth program funds made available through the American Recovery and Reinvestment Act of 2009, and only applies to the summer employment program element. If a limited competition is used to select service providers, the limited competition must be among service providers with proven records of success in providing youth services. The waiver is not to be construed as ETA approval of the process of selection, but rather approval under this waiver to use this procedure as a method of selecting summer youth employment providers, provided that the procedure meets Office of Management and Budget requirements (codified in 29 CFR Parts 95.40-95.48 and 97.36) and state and local procurement laws and policies.

(2) Requested Waiver: Waiver of performance measures for youth who participate in work experience only.

The State has requested a waiver of the common performance measures for out-of-school youth ages 18 to 24 who participate in work experience that occurs outside of the summer months.

When submitting a plan to request this waiver, the State must provide a justification for the waiver and address continued service plans for participants served under the waiver, such as transition to the WIA Adult program (i.e., co-enrollment in WIA Adult services) or further education and training activities under WIA or Recovery Act-funded youth services. See TEGL No. 14-08, Section 19, issued by ETA on March 18, 2009.

The State's written request meets the ETA requirements outlined above. The requested waiver is approved and allows the state to use the work readiness indicator as the only indicator of performance for such youth. The waiver only

applies to youth served through WIA Youth program funds made available through the American Recovery and Reinvestment Act of 2009. The waiver is only applicable from October 1, 2009 through March 31, 2010, the first six months following the summer of 2009.

In recognition that many older and out-of-school youth need supportive services to enable them to participate in work experience, this waiver can be applied to out-of-school youth ages 18 to 24 that receive supportive services in addition to participating in work experience. The waiver would not apply to such youth participating in other WIA youth program elements.

(3) Requested Waiver: Waiver of certain provisions under WIA section 129 and 20 CFR 664 to provide program design flexibility in serving youth who participate in work experience only.

The State has requested a waiver of certain provisions under WIA section 129 and 20 CFR 664, requiring the design framework of youth local programs to include 10 elements for improving the educational and skill competencies of its participants. Through this waiver, the State will be able to provide program design flexibility in serving out-of-school youth ages 18 to 24 who only participate in work experience that occurs outside of the summer months.

When submitting a plan to request this waiver, the State must provide a justification for the waiver and address continued service plans for participants served under the waiver, such as transition to the WIA Adult program (i.e., co-enrollment in WIA Adult services) or further education and training activities under WIA or Recovery Act-funded youth services. See TEGL No. 14-08, Section 19, issued by ETA on March 18, 2009. The State's written request meets the ETA requirements outlined above.

The State's waiver request is approved. Specifically, the State is granted a waiver of statutory and regulatory provisions as follows:

- Waiver of the requirement at WIA section 129(c)(2)(I) and 20 CFR 664.450(b) to provide a minimum of 12 months of follow-up services, to allow local areas to provide follow-up services with Recovery Act funds as deemed appropriate for such youth participants.
- Waiver of the requirement at WIA section 129(c)(1)(A) and 20 CFR 664.405(a)(1) to provide an objective assessment and the requirement at WIA section 129(c)(1)(B) and 20 CFR 664.405(a)(2) to develop an individual service strategy (ISS), to allow local areas to provide an assessment or ISS as deemed appropriate for such youth participants.

This waiver only applies to youth participants served through WIA Youth program funds made available through the American Recovery and Reinvestment Act of 2009. The waiver is only applicable from ~~October 1, 2009 through March 31, 2010~~, the first six months following the summer of 2009.

In recognition that many older and out-of-school youth need supportive services to enable them to participate in work experience, this waiver can be applied to out-of-school youth ages 18 to 24 that receive supportive services in addition to participating in work experience. The waiver would not apply to such youth participating in other WIA youth program elements.

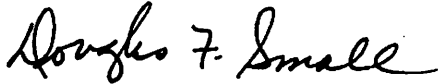
As part of its request for program design flexibility, the State requests a waiver for LWIBs to have the flexibility in determining which youth program elements they provide with Recovery Act funds for older youth served outside of the summer months. The State does not need a waiver for this. TEGL 14-08, Section 16.E. specifies that local areas have the flexibility to determine which program elements to provide with Recovery Act funds. This applies to all youth served with Recovery Act funds.

As part of its request for program design flexibility, the State also requests a waiver for LWIBs to have the flexibility in determining whether it is appropriate that academic learning be directly linked to summer employment for each youth served with Recovery Act funds. The State does not need a waiver for this. The WIA regulations under 20 CFR 664.600 require local boards to offer summer youth employment opportunities that link academic and occupational learning experiences to the program. This regulation only applies to the summer employment opportunities component of a year-round WIA youth activities program. In order to provide states and local areas with the flexibility needed to obtain the greatest impact from Recovery Act funding, we have determined that it is not necessary to apply this provision with respect to work experience provided outside the summer months under the waivers approved above.

~~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, we encourage the State to 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, please do not hesitate to call me at (202) 693-2700 or contact your State's Federal Project Officer in the Regional Office.

Sincerely,

A handwritten signature in cursive script that reads "Douglas F. Small".

Douglas F. Small  
Deputy Assistant Secretary

Enclosure

cc: Maryanne Langton, Federal Project Officer for Massachusetts, ETA Boston  
Regional Office