Andrew Cuomo, Governor Peter M. Rivera, Commissioner

NEW YORK STATE
WORKFORCE DEVELOPMENT SYSTEM
TECHNICAL ADVISORY #14-5

MAY 20, 2014

To: **Workforce Development Community**

Subject: **Workforce Investment Act (WIA) Waivers**

PURPOSE

The purpose of this Workforce Development System Technical Advisory (WDS-TA) is to announce the United States Department of Labor's (USDOL's) approval of New York State's waiver requests incorporated in its PY 2013 –PY 2016 State Plan.

ACTION

Local Areas seeking to implement incumbent worker training under waiver 4 should complete the attached Request to Use Local Adult and/or Dislocated Worker funds for Incumbent Worker Training **(Attachment A)** and submit it to: WDTD.Onestop@labor.ny.gov with "PY 2014 Request – WIA Waivers" in the subject line of the email.

POLICY

Full descriptions of each of the waivers approved for New York State and the period for which the waiver is granted are detailed below. A copy of USDOL's approval letter is included as Attachment A to this advisory**.**

1. **Waiver to permit the State to replace the performance measures at WIA Section 136(b) with the common measures.** The State is granted this waiver through June 30, 2017.

   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.

2. **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 is granted this waiver through June 30, 2017.

   Under the waiver, the transfer authority is increased to 50 percent. This waiver will provide LWIBs with greater flexibility to redirect resources where demand for services is greatest.

3. **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 Career Center System.** The State is granted this waiver through June 30, 2017.

   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. 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.

4. **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.** The State is granted this waiver through June 30, 2017.

   This waiver will allow local areas to request case-by-case approval from NYSDOL 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. 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. The form for requesting approval for the use of this waiver is included as Attachment B to this advisory.

   The 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.

   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. TEGL No. 26-09, Section 7A, "Workforce Investment Act (WIA) Waiver Policy and Waiver Decisions for PY 2009 and 2010" and TEGL 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.

5. **Waiver to Increase the Employer Reimbursement for On-the-Job Training (OJT) for Small-and Medium-Sized Businesses.** The State is granted this waiver through June 30, 2017.

   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. 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.

6. **Waiver to Discontinue the Collection of Seven of the Data Elements in Section 1 of the WIASRD for Incumbent Workers Trained with WIA Funds.** The State is granted this waiver through June 30, 2017.

   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.

7. **Waiver for the Inclusion of Youth Follow-Up Services, Work Experience and Supportive Services as a Youth Program Framework Service.** The State is granted this waiver through June 30, 2017.

   This waiver expands the definition of "youth program design framework services" to include follow-up services, work experience *and supportive services* when these services are provided by the grant recipient/fiscal agent. In these local areas, follow-up services, work experience and supportive services 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

8. **Waiver of the Prohibition at 20CFR 664.520 on the Use of Individual Training Accounts (ITA) for Older and Out-of-School Youth.** The State is granted this waiver through June 30, 2017.

   Under this waiver, local areas within the State can use ITAs for older 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) and ensure that funds used for ITAs are tracked and properly reflected in the individual service strategies for these youth.

9. **Waiver of performance measures for youth participants in summer youth employment activities and co-enrolled in TANF and WIA programs.** This waiver is effective from May 1, through September 30 of years 2014, 2015, 2016 and 2017.

This waives the common performance measures for youth who participate in subsidized summer youth employment activities that utilize Temporary Assistance to Needy Families (TANF) funds and are co-enrolled in WIA-funded youth programs. The waiver allows the State to use the work readiness indicator as the only indicator of performance for youth co-enrolled in WIA Youth and TANF programs and participating in subsidized summer youth employment activities. This waiver applies only to WIA Youth performance requirements; the State must comply with any reporting requirements established through TANF.

10. **Waiver to provide program design flexibility in serving youth participants in summer youth employment activities and co-enrolled in TANF and WIA programs.** This waiver is effective from May 1st through September 30th of years 2014, 2015, 2016 and 2017.

    This waives certain provisions under WIA Sec. 129 (c) and 20 CFR 664 to allow Local Workforce Investment Area (LWIA) staff increased flexibility in program design. Through this waiver, the State will be able to provide program design flexibility in serving youth who participate in subsidized summer youth employment activities that utilize TANF funds and are co-enrolled in WIA-funded youth programs.

    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 WIA Youth 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 co-enrolled in WIA Youth and TANF programs and participating in subsidized summer youth employment activities. Youth transitioning to year-round WIA Youth services after September 30th of each year must have in place an objective assessment and individual service strategy as required by WIA. The State may not apply this waiver to summer youth employment activities funded solely with WIA formula funds.

<u>Additional Guidance Regarding the Use of the Youth Waivers</u>
The intent of these waivers is to provide youth who are co-enrolled in TANF and the WIA Youth Program with summer employment activities, including all related services such as assessment, work readiness preparation, and supportive services. Overall, the summer program must be jointly funded with resources from both programs. For example, youth may be enrolled and assessed at the local social service agency and referred to the WIA youth provider for enrollment in the WIA program to receive work readiness training and placement in a summer job. As noted above, these waivers cannot be used for summer youth employment activities funded solely with WIA formula funds. There will be customized reporting required for this program in OSOS. These data entry guidelines will be released shortly.

The following waivers regarding state-level funding were also granted:

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.** The State is granted this waiver through June 30, 2017.

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 provision at 20 CFR 663.530 that prescribes a time limit on the period of initial eligibility for training providers. The State is granted this waiver through June 30, 2017.

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 as initially eligible providers. This waiver will ensure that the State Eligible Training List remains robust during a period of increased demand for training.

3. Waiver from the requirements to provide incentive grants to local areas. The State is granted this waiver through June 30, 2015.

This waiver allows the State to prioritize the use of Governor's Reserve funds for the required activities it deems most essential to the basic functions of the workforce investment system. The funding level in the Governor's Reserve was insufficient to cover the cost of incentive grants to local areas. The state's reduced funds were used to cover the following required activities: operating fiscal and management accountability information systems (WIA Section 134(a)(2)(B)(vi) and 20 C.F.R. 665.200(b)(1)); submitting required reports (WIA Section 136(f)); disseminating the list of eligible training providers for adults and dislocated workers (WIA Section 134(a)(2) (B)(i) and 20 C.F.R. 665.200 (b)(1)), and youth activities (20 C.F.R. 665.200(b) (4)), and; providing technical assistance to poor performing local areas (WIA Section 134(a)(2)(B)(iv) and 20 C.F.R 665.200(f)).

4. Waiver from the requirement to conduct evaluations. The State is granted this waiver through June 30, 2015.

This waiver allows the State to prioritize the use of Governor's Reserve funds for the required activities it deems most essential to the basic functions of the workforce investment system. The funding level in the Governor's Reserve was insufficient to cover the cost of evaluations. The state's reduced funds were used to cover the following required activities: operating fiscal and management accountability information systems (WIA Section 134(a)(2)(B)(vi) and 20 C.F.R. 665.200(b)(1)); submitting required reports (WIA Section 136(f)); disseminating the list of eligible training providers for adults and dislocated workers (WIA Section 134(a)(2)(B)(i) and 20 C.F.R. 665.200 (b)(1)), and youth activities (20 C.F.R. 665.200(b)(4)), and; providing technical assistance to poor performing local areas (WIA Section 134(a)(2)(B)(iv) and 20 C.F.R 665.200(f)).

References

Workforce Investment Act of 1998, Sections 101(8)(c), 101(31)(B), 101(33), 101(39), 122(c)(5), 123, 129(c), 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 30-09, "Layoff Aversion Definition and the Appropriate Use of Incumbent Worker Training for Layoff Aversion Using a Waiver."

TEGL 17-10, "Instructions for Submitting Workforce Investment Act and Wagner-Peyser Act State Plans and Waiver Requests for Program Year 2011."

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

TEGL 30-10, "Workforce Investment Act (WIA) Youth Program Guidance for Program Year (PY) 2011."

TEGL 27-12, "Funds Administration Flexibility for Workforce Investment Act of 1998 (WIA) Title I and Wagner-Peyser Act of 1933 (W-P Act) Funds."

INQUIRIES

Questions regarding this TA may be directed to: your State Representative

ATTACHMENTS

A. April 15, 2014 USDOL Approval letter, WIA waiver requests for PY 2013
B. Request to use Local Adult and/or Dislocated Worker funds for Incumbent Worker Training (IWT)