

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION
	CORRESPONDENCE SYMBOL OWI
	DATE December 11, 2008

ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 7-08

TO: ALL STATE WORKFORCE AGENCIES
ALL STATE WORKFORCE ADMINISTRATORS
ALL STATE WORKFORCE LIAISONS

FROM: BRENT R. ORRELL *Brent R. Orrell*
Deputy Assistant Secretary

SUBJECT: Instructions for Workforce Investment Act and Wagner-Peyser Act State Planning and Waiver Requests for Year Five of the Strategic Five-Year State Plan (Program Year 2009)

1. Purposes.

- To provide instructions to states for extending the life of their State Strategic Plans for Title I of the Workforce Investment Act of 1998 (WIA) and the Wagner-Peyser Act (“the State Plan”) for an additional year, through Program Year 2009;
- To provide instructions to states for extending existing waivers and requesting new waivers; and
- To announce renewal of Office of Management and Budget (OMB) approval for Stand-Alone and Unified Strategic State Planning Guidances.

2. References.

- Wagner-Peyser Act, as amended (29 U.S.C. 49 et seq.)
- Workforce Investment Act of 1998, as amended (29 U.S.C. 2801 et seq.)
- WIA Final Rule, 20 CFR parts 660-671
- Planning Guidance and Instructions for Submission of the Strategic State Plan and Plan Modifications for Title I of the Workforce Investment Act of 1998 (WIA) and the Wagner-Peyser Act (73 FR 72853 (Dec. 1, 2008))
- Planning Guidance for State Unified Plans and Unified Plan Modifications Submitted under Section 501 of the Workforce Investment Act (73 FR 73730 (Dec. 3, 2008))

Rescissions TEGL 13-06	Expiration Date Continuing
---------------------------	-------------------------------

3. **Background.** Current State Plans for all states, and all approved waivers currently in place, will expire on June 30, 2009. In the Planning Guidances (stand-alone and unified) issued on April 12, 2005, the Employment and Training Administration (ETA) only required states to submit a State Plan for the first two years of the five-year planning cycle because of the anticipated reauthorization of WIA. Given the continued uncertainty of WIA reauthorization, Training and Employment Guidance Letter (TEGL) 13-06 provided authority to states to submit a modification request to extend the life of the State Plan for two additional years, Program Years (PY) 2007 and 2008. For similar reasons, we are providing states with the opportunity to extend the life of the existing State Plan for an additional year, PY 2009, the final year of the five-year planning cycle by submitting a letter requesting a one-year extension of the current Plan or a modification request to revise and extend the current Plan.

4. **OMB Approval of Planning Guidances under the Paperwork Reduction Act.** The reporting requirements for submission of State Plans and Plan modifications using the Stand-Alone and Unified Planning Guidances, "State Planning Guidance and Instructions for Title I of the Workforce Investment Act of 1998 (WIA) and the Wagner-Peyser Act" and "Planning Guidance for State Unified Plans and Unified Plan Modifications Submitted under Section 501 of the Workforce Investment," are approved by OMB (OMB Approval No. 1205-0398) pursuant to the Paperwork Reduction Act of 1995, expiration date November 30, 2011, and were published in the Federal Register on December 1 and 3, 2008, respectively. These Guidances were previously approved under two separate OMB control numbers, 1205-0398 and 1205-0404.

Both the stand-alone and unified Guidances include revisions to the National Strategic Direction, which were incorporated in the revised Guidances published for public review and comment in the May 5, 2008, Federal Register. The National Strategic Direction was previously published in TEGL Letter 13-06. There are also minor revisions in the Planning Instructions of some questions in order to improve clarity, as well as deletions of those action items which are no longer relevant.

5. **Extension or Modification of the Existing State Plan.**
 - A. **State Plan for Year Five of the Five-Year Planning Cycle (Program Year 2009).**

States must have approved State Plans in place to receive formula allotments under WIA. Therefore, states are required to submit one of

the following in order to extend the life of the existing Stand-Alone or Unified Plan for PY 2009:

- A letter requesting a one-year extension of their current State Plan, without revisions to the Plan, or
- A modification request that revises the current State Plan and extends the life of the Plan for one year.

If preparing a modification, states are required to follow the state planning instructions included in Part II of the Stand-Alone Planning Guidance or Part III of the Unified Planning Guidance.

The WIA regulations at 20 CFR 661.230, and the WIA regulations at 20 CFR 652.212 which relate to the Wagner-Peyser Act portions of the Plan, require modifications in certain circumstances. In determining whether it is appropriate for your state to submit a request for an extension or submit a modified State Plan, it may be helpful to review the above-referenced regulations. Modifications are required when there are:

- Changes in Federal or state law or policy that substantially change the assumptions upon which the Plan is based;
- Changes in the statewide vision, strategies, or policies;
- Changes in the methodology used to determine local allocation of funds;
- Reorganizations which change the working relationship with system employees, or changes in organizational responsibilities;
- Reorganization of the state agency designated to deliver services under the Wagner-Peyser Act;
- Changes in services delivered by state merit-staff employees;
- Changes to the membership structure of the State Board or alternative entity;
- Changes in Wagner-Peyser service delivery strategy;
- Changes in performance indicators. A state that has failed to meet performance goals and must adjust service strategies should submit a substantive modification; and
- Any similar substantial changes to the state's workforce investment system.

We are aware that a few states are required to submit modifications, instead of simply extending their Plan, to fully describe organizational changes that have taken place since their last modification. The Regional Offices will notify these states of the need to submit a full modification.

States will also need to consider whether the economic downturn will require a redirection of program focus, and if so, whether a modification

of the State Plan is necessary at this point or at some later time. If there is a question about whether a particular change in circumstance requires a modification, the state should seek assistance from the appropriate Regional Office.

B. Public Comment and Review.

The WIA regulations at 20 CFR 661.230(d) provide that modifications to the State Plan are subject to the same public review and comment requirements that apply to the development of the original Plan. To facilitate public review and comment, as well as DOL review of the modified Plans, ETA recommends those states submitting a modification request integrate the proposed modifications into existing Plans following the format provided in either the Stand-Alone Planning Guidance (73 FR 72853 (Dec. 1, 2008)) or Unified Planning Guidance (73 FR 73730 (Dec. 3, 2008)), and attach a list to identify modified portions of the Plan.

States that are extending the life of their Plan by one year are encouraged to notify the public of their intent, and make the current Plan available to the public. Providing an opportunity for meaningful public input and comment during the development of the State Plan is a critical part of the strategic planning process.

6. **Extension of Existing Waivers and New Waiver Requests.** Many states have WIA Title I waivers that expire June 30, 2009. States wishing to continue with such waivers may request an extension through June 30, 2010, by including in their State Plan extension request or modification submission an abbreviated waiver request that references the original waiver plan submission and provides a brief rationale for the extension, including the performance outcomes achieved by implementation of the waiver. New waivers should be submitted as full requests with the State Plan modification. The Regional Offices and the National Office are available for consultation as states prepare their Plans and consider potential waivers. The attachment lists waivers ETA routinely approves.
7. **Negotiation of Levels of Performance.** In 2007, states negotiated performance levels with their Regional Office for PY 2007 and PY 2008. States have the option of continuing to use the goals negotiated for PY 2008 or negotiating new goals for PY 2009. If a state wishes to negotiate new goals, the state must submit proposed levels of performance as part of the State Plan extension request or modification submission. States that have completed negotiations with ETA can include their agreed-upon levels of

performance for PY 2009 for WIA and Wagner-Peyser Act programs in the State Plan as part of their modification or extension request. States that negotiate levels of performance for PY 2009 after the submission of the modification or extension request can have their agreed-upon performance levels incorporated into the State Plan at a later date. Proposed levels of performance are subject to WIA's public comment requirements for modifications or extensions.

Further guidance about the negotiation of the measures will be issued separately. Guidance regarding the negotiation of measures of One-Stop Career Center services to Veterans, and measures for the Jobs for Veterans state grant specific outcomes will be issued separately by the Veterans Employment and Training Service.

8. **Action Requested - Submission of Extensions or Modifications.** The due date for submission of the modification or extension request, including waivers, is April 15, 2009. States have the option to submit their State Plan modification or extension requests in an electronic, hard copy, or CD-ROM format. ETA encourages electronic submissions to reduce the processing burden and to ensure timely receipt by ETA.

The Federal Coordinator, without regard to which option the State uses for submission, will confirm receipt of the State Plan modification or extension within two business days of receipt and indicate the date for the start of the review period. When a State submits an incomplete State Plan modification, the period for review will not start until all required components of the modification have been received.

A. Electronic Submission.

States can submit a State Plan modification or extension request electronically either by posting it on an Internet Web site that is accessible to ETA or by transmitting it through E-mail to ETA. State Plan certifications with electronic signatures are acceptable. If a state chooses not to use an electronic signature, then the signature page must be submitted in hard copy with an original signature.

Posting State Plans on an Internet Web Site. Under this option, a State should post its State Plan modification or extension request on an Internet Web site; inform the Federal Coordinator and the appropriate ETA Regional Administrator through E-mail of the URL and the location of the document on the Web site; provide contact information in the event of problems with accessing the Web site; and certify that no changes will be

made to the version posted on the Web site after it has been submitted to the Department, unless the Department gives prior approval for such changes.

Transmitting State Plans by E-Mail. States submitting their Plan modification or extension request by electronic mail should send it to WIA.PLAN@DOL.GOV with a copy sent to the appropriate ETA Regional Administrator. If a State chooses to submit its State Plan modification or extension request by transmitting it through E-mail, the State must submit it in Microsoft Word or PDF format.

B. Hard Copy or CD-ROM Submission.

States choosing to submit a hard copy should submit one copy of the Plan modification or extension request with an original signature to the appropriate ETA Regional Administrator and one copy to Janet Sten, the Federal Coordinator for Plan Review and Approval.

Division of Workforce System Support
Employment and Training Administration
U.S. Department of Labor
200 Constitution Ave., NW, Room S-4231
Washington, DC 20210
ATTN: Janet Sten

States submitting a State Plan modification on CD-ROM should submit one copy of the Plan to the appropriate ETA Regional Administrator, and one copy to Janet Sten, the Federal Coordinator for Plan Review and Approval at the address above. If the modification on the CD-ROM does not include the signature of the governor on the signature page, the State must submit separately an electronic signature or a hand-signed signature page in hard copy. Plans submitted on a CD-ROM must be in Microsoft Word or PDF format.

9. **Inquiries.** Questions regarding this guidance should be directed to Janet Sten at sten.janet@dol.gov, or Robin Fernkas at fernkas.robin@dol.gov, or the appropriate ETA Regional Office. Both can be reached by calling (202) 693-3045. States may also submit questions by E-mail to WIA.PLAN@DOL.GOV regarding the planning process.

10. **Attachment.** WIA Waivers and Work-flex Plan Options.

Attachment

WIA Waivers and Work-flex Plan Options

Waivers

States may want to consider requesting one or more of the following waivers:

1. Waiver of the funds transfer limitation at WIA Section 133(b)(4) to permit states to approve local area requests to transfer up to 100 percent of local area formula allocation funds between the WIA Adult and Dislocated Worker programs.
2. Waiver to permit implementation of (and reporting only) common measures in place of current measures.
3. Waiver of the language that limits the authority to provide the activities identified in WIA Section 134 to the state to permit local areas to request the use of a portion of local area formula funds for adults and dislocated workers to provide statewide activities identified at WIA Section 134(a)(3)(A)(iv) including incumbent worker training.

The Department has approved this waiver in amounts ranging from 10 to 50 percent. States will be required to report performance outcomes for incumbent workers served under this waiver.

4. Waiver of the language limiting the authority to provide the activities at WIA Section 134(a)(1)(B) to statewide reserve funds to permit the use of a portion of the funds reserved for rapid response activities at WIA Section 133(a)(2) to provide incumbent worker training.

The Department has approved this waiver in amounts ranging from 10 to 50 percent. States will be required to report performance outcomes for incumbent workers served under this waiver.

5. Waiver of the reallocation provisions at WIA sections 128(c)(2) and 133(c)(2), and 20 CFR 667.160 to provide states additional flexibility in the targeting of WIA funds.

Under the waiver, states will be permitted to implement the following features: 1) mid-year deobligation and reallocation of local area funds; 2) recapture of funds from local areas that have not expended at least 80 percent of their local funds in the first year; 3) use of recaptured funds for

statewide activities or reallocation to other eligible local areas; and 4) use of additional factors in determining local area eligibility for a reallocation of recaptured funds, including demonstrated need and ability to use additional funds.

6. Waiver of the required 50 percent employer match for customized training at WIA Section 101(8)(C) to permit a match based on a sliding scale.

Under the waiver, the following sliding scale is generally 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 51-100 employees. For employers with more than 100 employees, the current statutory requirements continue to apply.

7. Waiver of WIA Section 101(31)(B) to permit states to reimburse the employer on a graduated scale based on the size of the business.

Under the waiver, the following reimbursement amounts are generally permitted: 1) up to 90 percent for employers with 50 or fewer employees, and 2) up to 75 percent for employers with more than 50 but fewer than 100 employees. For employers with 100 or more employees, the current statutory requirements will continue to apply.

8. Waiver of the prohibition on the use of Individual Training Accounts for older and out-of-school youth at 20 CFR 664.510.

Work-flex Authority

Work-flex authority allows Governors to waive any of the statutory or regulatory requirements under Title I of WIA applicable to local areas, except those described at 20 CFR 661.430(a)(1), any of the statutory or regulatory requirements applicable under Sections 8 through 10 of the Wagner-Peyser Act, except for those listed at 20 CFR 661.430(a)(2), and any of the statutory or regulatory requirements under the Older Americans Act of 1965, except those described at 20 CFR 661.430(a)(3). Once a state is identified as a work-flex state, it has the authority to identify additional local level provisions to waive without further approval from the Secretary of Labor.