

U.S. Department of Labor

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



NOV 17 2010

The Honorable Rick Perry  
Governor of Texas  
Post Office Box 12428  
Austin, Texas 78711

Dear Governor Perry:

The Employment and Training Administration (ETA) is pleased to respond 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 request is written in the format identified in WIA section 189(i)(4)(B) and 20 CFR 661.420(c), and appears 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 waiver approval that follows applies to both WIA formula funds and funds made available under the American Recovery and Reinvestment Act of 2009.

Requested Waiver: Waiver of WIA Section 101(31)(B) to increase the employer reimbursement for on-the-job training.

The State is requesting 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 this waiver, effective October 1, 2010 through June 30, 2011. Under the waiver, a reimbursement amount of up to 75 percent for employers with 250 or fewer employees is permitted. 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 may provide on-the-job training to low-income adults with WIA Adult funds, and 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.

Requested Waiver: Waiver of the reallocation provisions at WIA Sections 128(c)(3) and 133(c)(3), and 20 CFR 667.160.

The State is requesting a waiver of the reallocation provisions at WIA Sections 128(c)(3) and 133(c)(3), and 20 CFR 667.160(c) to permit it to reallocate recaptured funds according to state-developed criteria. The State requests this waiver because when it reallocates the amounts recaptured under 20 CFR 667.160(c) to eligible local areas, the amount each local area receives is typically small, especially when spread among many

of its 28 local workforce areas, and administratively burdensome compared to the reallocated sum. In its request and through follow-up conversations with regional office staff, the State describes a policy for reallocation that is based on objective criteria and was created in a transparent manner, with adequate opportunity for comments from local boards, stakeholders, and the general public. The State also has established a process by which it regularly reviews spending patterns with, and provides technical assistance to, local areas in an effort to encourage prompt spending and reduce as much as possible the amount of local area funds subject to recapture. As a result, Texas typically has a record of regularly spending its funds in a timely manner with very limited amounts available for recapture by the Governor under 20 CFR 667.160 or the Secretary under 20 CFR 667.150.

The State is granted this waiver, effective October 1, 2010 through June 30, 2011. Under the waiver, the State has the discretion to consider additional factors described in its waiver plan in determining local area eligibility for a reallocation of recaptured funds. Specifically, the State can consider:

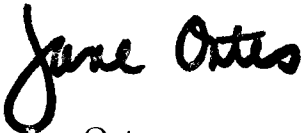
- the amount available for redistribution;
- amount requested by a local board;
- demonstrated need for and ability to use additional funds to serve low-income individuals, public assistance recipients, dislocated workers, and unemployment insurance claimants;
- a demonstrated capacity to effectively expend funds to address the need for services in the workforce area;
- a local board's established plan for working with at least one of the Governor's industry clusters as specified in the board's plan; and
- the local workforce area's performance during the current and prior performance years.

The State must make public its reallocation procedure and policy, as well as any future changes to its policy. Please note that the approved waiver only applies to reallocation, and not recapture.

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 required by TEGL No. 14-00, Change 3, the State should address the impact its 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 continuing our partnership with you and achieving better workforce outcomes. If you have any questions related to the issues discussed above, please contact me at (202)693-2700 or [Oates.Jane@dol.gov](mailto:Oates.Jane@dol.gov), or contact Joseph Juarez, the Regional Administrator for Region IV, at (972) 850-4600 or [Juarez.Joseph@dol.gov](mailto:Juarez.Joseph@dol.gov).

Sincerely,

A handwritten signature in black ink that reads "Jane Oates". The signature is written in a cursive style with a large initial "J".

Jane Oates  
Assistant Secretary

Enclosure

# Texas Workforce Commission

A Member of Texas Workforce Solutions

Tom Pauken, Chairman

Ronald G. Congleton  
Commissioner Representing  
Labor

Andres Alcantar  
Commissioner Representing  
the Public

Larry E. Temple  
Executive Director

August 17, 2010

Mr. Joseph C. Juarez  
Regional Administrator, Region IV  
U.S. Department of Labor  
Employment and Training Administration  
A. Maceo Smith Federal Building  
525 Griffin Street, Room 317  
Dallas, Texas 75202

Dear Mr. Juarez:

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 requested waivers were developed in accordance with WIA §189(i)(4), 20 C.F.R. §§661.400–661.420, and Training and Employment Guidance Letter No. 27-09.

TWC is requesting the following:

1. A waiver of the provisions of WIA §101(31)(B), which provides for a 50 percent reimbursement rate to employers providing on-the-job training (OJT) opportunities for adults, dislocated workers, and older youth. The waiver will allow Local Workforce Development Boards (Boards) to provide employers with a reimbursement rate of 50 or 75 percent of the employer match, based on employer size.

To encourage employers to place low-income individuals and hard-to-serve dislocated workers in OJT, Boards will be permitted to offer reimbursement on the following sliding scale:

- For employers with 250 or fewer employees, reimbursement may be up to 75 percent.
  - For employers with 251 or more employees, reimbursement will remain at 50 percent.
2. A waiver of the provisions of WIA §128(c) and WIA §133(c), and 20 C.F.R. §667.160 associated with redistribution of funds among local workforce development areas (workforce areas). Currently, TWC's General Administration rules (40 Texas Administrative Code, Chapter 800) allow it to ensure that funding is redistributed in a manner that best serves Texas citizens who are most in need of services. The rules require that:
    - Boards that do not meet specified targets are not eligible to receive redistributed funds; and
    - funds must be redistributed to workforce areas that can effectively design and deliver services for low-income and hard-to-serve individuals, and expend the funds in a manner that is consistent with U.S. Department of Labor (DOL) expectations.

101 E. 15th Street • Austin, Texas 78778-0001 • (512) 463-2222 • Relay Texas: 800-735-2989 (TDD) 800-735-2988 (Voice) • [www.texasworkforce.org](http://www.texasworkforce.org)

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Joseph C. Juarez  
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As required by DOL, enclosed is a description of the process for providing notice and opportunity to comment on the waiver requests to Boards and other interested parties.

We appreciate the opportunity to submit these waiver requests and look forward to receiving the Secretary's approval. We believe the waivers will provide increased flexibility to the state and the Boards and will allow TWC to place funds in workforce areas most in need.

If you have questions or require additional information, please contact Reagan Miller, Deputy Division Director, Workforce Policy and Service Delivery Branch, at (512) 936-3563.

Sincerely,



Larry E. Temple  
Executive Director

Enclosure

cc: H. E. (Gene) Crump, Jr., Deputy Executive Director, TWC

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

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**BACKGROUND**

9 As outlined in Texas’s Strategic State Plan for Title I of the Workforce Investment Act  
10 (WIA) of 1998 and the Wagner Peyser Act for the period of July 1, 2005–June 30, 2011,  
11 Texas places great emphasis on serving those most in need. The Texas Workforce  
12 Commission (TWC) and Local Workforce Development Boards (Boards) work together  
13 to be good stewards of public funds and ensure they are expended as intended.

14 TWC accomplishes this through various strategies, including active oversight of service  
15 delivery and expenditures. Because TWC consistently encourages Boards to expend their  
16 funds in a manner that best serves the individuals in their local workforce development  
17 areas (workforce areas), Texas has historically sized its program to expediently  
18 administer available funds and promptly deliver services to those most in need.

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**PROVISIONS TO BE WAIVED**

21 WIA §128(c) and §133(c), and 20 C.F.R. §667.160

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23

**WAIVER REQUEST**

24 TWC seeks a waiver of the requirements associated with redistribution of funds among  
25 workforce areas. Currently, TWC rules (40 Texas Administrative Code (TAC) Chapter  
26 800) and procedures allow it to ensure that funding is redistributed in a manner that best  
27 serves Texas citizens who are most in need of services. TWC rules require that:

- 28
- 29 • Boards that do not meet specified targets are not eligible to receive redistributed funds; and
  - 30 • funds must be redistributed to workforce areas that can effectively design and deliver services for low-income and hard-to-serve individuals, and expend the funds in a manner that is consistent with U.S. Department of Labor (DOL) expectations.
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***Description of How Waiver Will Be Applied***

35 TWC rule at 40 TAC §800.77 sets forth a detailed process used for all funds located to  
36 the workforce areas—except WIA funds. These funds include Choices, Supplemental  
37 Nutrition Assistance Program Employment and Training, Project Reintegration of  
38 Offenders, and child care. TWC conducts a monthly performance and expenditure  
39 information review with Boards, which includes:

- 40
- 41 • expenditure review;
  - 42 • constant communication with Boards surrounding areas of concern;
  - 43 • submission of service delivery plans for both under-expenditure and over-expenditure of allocations, if appropriate; and
  - 44 • continued monitoring of spending using the service delivery plan to evaluate progress, including reviews of training obligations.
- 45  
46

1 In addition, prior to the acceptance of deobligated funds, TWC meets with the Board's  
2 executive director to review expenditures and the Board's spending plan to determine if  
3 deobligation is appropriate.

4  
5 To be eligible to receive deobligated funds, Boards must submit a request for additional  
6 funds that outlines the following:

- 7 • The planned use of the requested funds;
- 8 • Number of participants to be served/trained with the requested funds;
- 9 • An overview of the local situation; and
- 10 • The impact to the local community if funds are not received.

11  
12 In addition to information in the funding request, TWC considers the following when  
13 determining redistribution to a workforce area:

- 14 1. Amount available for redistribution;
- 15 2. Amount requested by Board;
- 16 3. A demonstrated need for and ability to use additional funds to serve low-income  
17 individuals, public assistance recipients, dislocated workers, and unemployment  
18 insurance (UI) claimants;
- 19 4. A demonstrated capacity to effectively expend funds to address the need for services  
20 in the workforce area;
- 21 5. The Board's established plan for working with at least one of the Governor's industry  
22 clusters, as specified in the Board's plan; and
- 23 6. The workforce area's performance during the current and prior performance year.

#### 24 25 *Financial Reporting*

26 TWC ensures that financial reporting will be consistent with current DOL requirements  
27 and that federal funds will be effectively managed for maximum service provision and  
28 program performance.

#### 29 30 ***Goals To Be Achieved by the Waiver***

31 TWC seeks to achieve the following goals with the requested waiver:

- 32 • Ensure that WIA and American Recovery and Reinvestment Act (ARRA) of 2009  
33 funds are expended to provide assistance to WIA-eligible participants including low-  
34 income individuals, recipients of public assistance, dislocated workers, and UI  
35 claimants; and
- 36 • Maximize the impact of the limited available funds by targeting workforce areas that  
37 have the greatest need.

38  
39 Under the current WIA statute, TWC must redistribute any funds received through  
40 deobligation to all other workforce areas. Because the total amount of deobligated funds  
41 is generally small and comes from only a few of the 28 workforce areas, TWC proposes  
42 the use of a targeted redistribution model. Through targeted redistribution, the state can  
43 maximize the benefits of limited deobligated funds by allowing identified workforce  
44 areas—those with a demonstrated need—to provide more significant program  
45 enhancements, rather than diluting the funds by redistributing them to the remaining  
46 workforce areas.

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2 If approved, the redistribution of WIA and ARRA funds will follow TWC's existing  
3 procedures for the redistribution of other funds (40 TAC §800.77), which allow TWC to  
4 place funds in workforce areas most in need.

5  
6 ***Description of the Individuals Affected by the Waiver***

7 The waiver is expected to benefit the following:

- 8 • WIA-eligible individuals, including low-income individuals, recipients of public  
9 assistance, dislocated workers, and older youth, by providing additional job skills and  
10 employment opportunities.
- 11 • Employers, by directing funds to workforce areas with the greatest need and offering  
12 those Boards the opportunity to engage more participants in services to address  
13 employer needs.

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15 **Describe the Processes Used to Monitor the Progress in Implementing the Waiver**

16 The Commission has adopted rules that describe the general deobligation and reallocation  
17 provisions that apply to funds allocated to local workforce development areas (workforce  
18 areas). The purpose of these rules is to promote effective service delivery, financial  
19 planning, and management to ensure full utilization of funding, and to reallocate funds to  
20 populations in need.

21  
22 The Agency has in place a standardized expenditure and service delivery oversight  
23 mechanism for all workforce funds. The process has been in place since 2005 and  
24 includes: 1) a monthly budget analysis; 2) a performance analysis; and 3) identification  
25 of Local Workforce Development Boards in need of technical assistance to improve  
26 performance, service delivery, or utilization of funding.

27  
28 The reallocation rule provides the parameters that Agency staff follow in making  
29 reallocation recommendations to the Commission, such as the demonstrated ability of a  
30 workforce area to effectively expend funds to address the need for services in the  
31 workforce area, and the workforce area's performance during the current and prior  
32 program year. Any recommendations for reallocation come before the Commission in  
33 posted public meetings. Transcripts of all public meetings are maintained on the  
34 Agency's Web site, allowing any person or entity to monitor the Commission's actions  
35 regarding implementation of this waiver.

36  
37 Once funds are reallocated to a workforce area, they are monitored using the strict  
38 standardized expenditure and service delivery oversight mechanism described above.

39  
40 **Opportunity for Public Comment**

41 The waiver request was presented at TWC's July 27, 2010, public meeting and posted to  
42 the TWC Web site for review and comment. The waiver request also was discussed  
43 during the July 30, 2010, conference call with the Boards. No comments were received.  
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