

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION WIA State Plans
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ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 21-09

TO: STATE WORKFORCE AGENCIES
STATE WORKFORCE ADMINISTRATORS
STATE WORKFORCE LIAISONS
STATE AND LOCAL WORKFORCE BOARD CHAIRS AND DIRECTORS
STATE LABOR COMMISSIONERS

FROM: JANE OATES *Jane Oates*
Assistant Secretary

SUBJECT: Instructions for Submitting Workforce Investment Act and Wagner-Peyser Act State Plans and Waiver Requests for Program Year 2010.

1. **Purpose.** The purpose of this Training and Employment Guidance Letter (TEGL) is to provide information on:

- Options for states to have in place approved Workforce Investment Act and Wagner-Peyser Act (WIA/W-P) State Plans and waivers for Program Year (PY) 2010.
- When State Plan modifications are required.

In addition, this TEGL provides information on the Employment and Training Administration's (ETA) plan to seek volunteers to work on an implementation strategy for using regression analysis in the negotiation of performance levels.

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 Regulations, 20 CFR parts 652 and 660-671
- Priority of Service for Covered Persons Regulations (Veterans' Priority of Service Regulations), 20 CFR part 1010.100-330
- The American Recovery and Reinvestment Act of 2009 (P.L. 111-5)
- Planning Guidance for the Strategic State Plan for Title I of the Workforce Investment Act of 1998 (WIA) and the Wagner-Peyser Act (W-P) [73 FR 72853 (Dec. 1, 2008)] (OMB No. 1205-0398)
- State Unified Plan Planning Guidance [73 FR 73730 (Dec. 3, 2008)] (OMB No. 1205-0398)

RESCISSIONS None	EXPIRATION DATE Continuing
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- TEGL No. 14-08, “Guidance for Implementation of the Workforce Investment Act and Wagner-Peyser Act Funding in the American Recovery and Reinvestment Act of 2009 and State Planning Requirements for Program Year 2009”
- TEGL No. 14-08, Change 1, “Guidance for Implementation of the Workforce Investment Act and Wagner-Peyser Act Funding in the American Recovery and Reinvestment Act of 2009 and State Planning Requirements for Program Year 2009”
- TEGL No. 17-05, “Common Measures Policy for the Employment and Training Administration’s (ETA) Performance Accountability System and Related Performance Issues.”
- TEGL No. 09-08, Change 1, “Revised National Performance Goal Targets for the Government Performance Results Act (GPRA) to support Negotiating State Performance Goals for the Workforce Investment Act Title IB Programs, Wagner-Peyser Act Funded Activities for Program Year 2009.”

3. Background. All WIA/W-P State Plans currently in place will expire on June 30, 2010, and all approved waivers currently in place will expire before or on June 30, 2010. This is the end of the five-year planning cycle which began on July 1, 2005. States must have approved State Plans in place to receive formula allotments under WIA and the Wagner-Peyser Act. Given that the Department of Labor (DOL) is anticipating the reauthorization of WIA within the next year, ETA is providing two options to extend or modify current plans in order to enable states to have an approved State Plan in place for PY 2010 without engaging in full five-year planning. If WIA is reauthorized and requires changes to WIA/W-P State Plans, ETA will issue subsequent guidance on implementing any new requirements.

4. State Plan Options for PY 2010. There are two options for states to secure approval of their WIA/W-P State Plan for PY 2010, the first year of the new PY 2010-2014 five-year planning cycle, July 1, 2010 – June 30, 2015.

A. Option I: ETA approves an extension of the current WIA/W-P State Plan for an additional year, through PY 2010 (July 1, 2010 – June 30, 2011).

As noted above, WIA requires states to have an approved WIA/W-P State Plan in place in order to receive WIA/W-P allotments. ETA will consider this legislative requirement met by approving for all interested states an extension of their current State Plan for an additional year. ETA will also approve waivers for an additional year as described in Section 5.A below. Information on the process for State Plan extensions and waiver extensions is provided below in Section 6.A.

B. Option II: ETA reviews and approves the WIA/W-P State Plan modification submitted by a state for PY 2010.

Section 112(d) of WIA provides that states may submit modifications to State Plans at any time during the five-year period covered by the Plan. Any state that wishes to revise its State Plan instead of receiving approval for an extension of its current Plan should submit a State Plan modification for the period of PY 2010, July 1, 2010 through June 30, 2011.

Under WIA regulations, states that have undergone substantial changes may be required

to submit a modification instead of an extension. For instance, some states are required to submit modifications to describe organizational changes that have occurred since their last modification. States that meet the criteria provided below must submit a modification. Information on the process for submitting a State Plan modification, due May 14, 2010, is provided below in Section 6.B.

The WIA regulations at 20 CFR 661.230, and the regulations at 20 CFR 652.212 which relate to the Wagner-Peyser Act portions of the Plan, require modifications in certain circumstances. These regulations provide that 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, to include any enhancements needed to State Plans pursuant to the issuance of the final rule on Veterans' Priority of Service (20 CFR 1010.100-330);
- 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.

The requirements listed above apply to stand-alone plans as well as the WIA Title I and Wagner-Peyser Act portion of unified plans. In determining whether it is appropriate for your state to submit a modified State Plan, it may be helpful to review the State Plan in light of these requirements.

5. Waiver Options for PY 2010. Most states have waivers that expire on or before June 30, 2010. Many of these waivers apply to the American Recovery and Reinvestment Act (Recovery Act) funds and these funds expire June 30, 2011. ETA encourages each state to consider whether its approved waivers support the strategies outlined in its existing State Plan and match the needs of its workforce system. This is an ideal time for states to consider whether new waivers are needed, and whether currently approved waivers support their strategic goals.

For PY 2010, states can extend their existing waivers and/ or submit requests for new waivers.

A. Extension of Existing Waivers through PY 2010 (July 1, 2010 – June 30, 2011).

ETA will grant an extension of an additional year for existing waivers that have been approved, except in the following circumstances: (1) ETA has advised the state in prior correspondence that it did not anticipate approving an extension beyond June 30, 2010; or (2) ETA advises the state that there are significant performance issues related to the use

of the waiver or that the waiver as implemented is not in compliance with the terms prescribed in the approval letter.

To ensure meaningful public comment as required by 20 CFR 661.420(5)(iv), ETA encourages states to notify the public of their intent to extend the existing waivers. Information on the streamlined process for the extension of waivers is provided in Section 6.A.

B. New Waiver Requests for PY 2010.

States wishing to request new waivers must submit full waiver plans to ETA, and states wishing to make adjustments to current waivers must also submit full waiver plans. The waiver plan must include all the required elements listed in the WIA regulations at 20 CFR 661.420(c), and is subject to public comment requirements. If a state no longer intends to use a certain waiver, it should advise ETA of this and request that it not be extended.

States should be aware that ETA is not able to waive provisions in the Recovery Act or Veterans Priority of Service regulations, nor OMB requirements such as the OMB Cost Principles or OMB Circulars. Waivers of most WIA provisions will also apply to Recovery Act funds, with the exception of the following waivers, as indicated in TEGL No. 14-08:

- Waiver of the funds transfer limit between the Adult and Dislocated Worker programs, which remains at 30 percent as described in TEGL No. 14-08 change 1 Section 5.
- Waiver to permit the state to use a portion of rapid response funds to conduct statewide activities including incumbent worker training.

ETA will publish forthcoming guidance on waiver flexibility, including for summer youth activities.

6. Actions Required for State Plans and Waivers.

A. State Plan and Waiver Extensions.

In order to avoid placing unnecessary burden on states, states do not need to submit anything in order to have their State Plan and waivers approved for an extension of one additional year. Unless a state elects or is required to submit a State Plan modification (instructions for which are provided in Section 6.B.), ETA will approve an extension of the existing State Plan for an additional year. ETA will grant an extension of each waiver unless one of the following conditions applies:

- ETA receives a written notification (letter or e-mail) from the state that it is not interested in extending a specific waiver;
- ETA has advised the state in prior correspondence that it does not anticipate approving an extension beyond June 30, 2010; or
- ETA advises the state that there are significant performance issues related to the

use of the waiver or that the waiver as implemented is not in compliance with the terms prescribed in the approval letter.

ETA will send each state a letter by June 30, 2010 approving an extension of the existing State Plan for the period, July 1, 2010 - June 30, 2011, and identify the waivers that it is extending into PY 2010.

B. State Plan Modification and New Waiver Plan Submission.

States that elect to or are required to submit a modification to the State Plan, or new waiver plan that the state wishes to have in place for all of PY 2010, must do so by May 14, 2010. States have the option to submit their State Plan modifications or waiver 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 will confirm receipt of the State Plan modification 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 or waiver plan, the period for review will not start until all required components have been received.

Electronic Submission. States can submit a State Plan modification or waiver 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. States choosing to post on an Internet Web site should post the State Plan modification or waiver request on a Web site and send an e-mail to WIA.PLAN@dol.gov and the appropriate ETA Regional Administrator. The e-mail must identify the URL for the State Plan modification or waiver request, 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 ETA, unless ETA gives prior approval for such changes.

States submitting their modification by e-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 modification or waiver request by transmitting it through e-mail, the state must submit it in Microsoft Word or PDF format.

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 to the Federal Coordinator, and a copy to the ETA Regional Administrator.

Hard Copy or CD-ROM Submission. States choosing to submit a hard copy should submit one copy of the modification or waiver request with an original signature to Janet Sten, the Federal Coordinator for Plan Review and Approval, and one copy to the appropriate ETA Regional Administrator. The address for the Federal Coordinator is as follows:

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 or waiver request on CD-ROM should submit one copy to the Federal Coordinator at the address above, and one copy to the appropriate ETA Regional Administrator. If the modification on the CD-ROM does not include the signature of the Governor on the signature page, the state must submit electronically a signed signature page, or a hand-signed signature page in hard copy. Documents submitted on a CD-ROM must be in Microsoft Word or PDF format.

C. State Plan Modification Content.

States submitting a State Plan modification must follow the state planning instructions and questions included in Part II of the Stand-Alone Planning Guidance (73 Fed. Reg. 72853, December 1, 2008) or Part III of the Unified Planning Guidance (73 Fed. Reg. 73730, December 3, 2008). States may update their responses to these questions and modify a single part, many parts, or all of their State Plan. States are particularly encouraged to update their responses to the questions listed in TEGL No. 14-08, Appendix A, which were required as part of the State Plan modification to describe implementation of the Recovery Act, and to describe how the state is continuing to use Recovery Act and WIA funds to serve the substantial numbers of unemployed individuals who continue to seek the services of the One-Stop Career Center system.

In TEGL No. 14-08, ETA required states to submit the responses to those questions in a stand-alone document to provide a publicly accessible document describing Recovery Act implementation. For any future modifications, including the May 14, 2010 modification, ETA encourages states to integrate responses to those questions into the Plan itself.

Note that the respective ETA Regional Administrator will provide a copy of each plan modification that contains revisions related to veterans' priority of service to the Veterans' Employment and Training Service (VETS) Regional Administrator who will review it to ensure that the plan modification adequately addresses and adheres to Veterans' Priority of Service provisions of the Jobs for Veterans Act.

7. 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 that those states submitting a modified Plan integrate the proposed modifications into the existing Plan 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 those portions of the Plan that have been modified.

In keeping with ETA's efforts to promote transparency, even states that are extending the life of their existing 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 and life of the State Plan is a critical part of the strategic planning process. The WIA regulations at 20 CFR 661.420(c)(5)(iv) require that states provide meaningful public comment for new waiver plans as well. ETA also encourages states to notify the public of their intent to extend current waivers.

8. Local Plan Development. Under 20 CFR 661.355, each Governor sets the policy for when a Local Plan must be modified, such as significant changes in local economic conditions and changes in financing available for WIA Title I and partner-provided WIA services. States maintain the option to review their Local Plan modification policy, and to require that Local Plans be modified according to state policy. Although ETA encouraged states to require that Local Plans be modified for PY 2009, ETA leaves it entirely to the state to determine whether or not to require that Local Plans be modified for PY 2010.

9. Guidance for States with Unified State Plans. States are authorized to submit a Unified Plan under Title V, Section 501 of the Workforce Investment Act, and the Unified Planning Guidance facilitates the development and submission of such a plan. As indicated in Section 4.A, ETA will consider the WIA legislative requirement that states have a State Plan in place to be met by approving for all states an extension of their current WIA/W-P State Plan for an additional year. This approval does not apply to the other programs included in a state's Unified Plan. ETA does not have the authority to approve those portions of a Unified Plan that relate to programs or activities for which other Federal agencies exercise administrative authority.

As indicated in Section 4.B, states can submit a modification request that covers PY 2010 in lieu of extending their current WIA/W-P State Plan. States submitting a modification of a Unified Plan should follow the Unified Planning Guidance (73 Fed. Reg. 73730, December 3, 2008). As indicated in the Guidance, the Federal Coordinator will ensure that each Federal agency whose programs are included in the state's Unified Plan, and the appropriate DOL Regional Office, receive copies of the Unified Plan as modified.

Currently only three states have unified State Plans in place. ETA will provide additional information to these states, and any other state using the modification process to move to a Unified Plan. In the interim, if states have questions related to submitting a modification using the unified planning guidance, they should contact the Federal Coordinator for Plan Review and Approval (contact information is provided in Section 6.B). Any state that does not currently have a Unified Plan and intends to move from a stand-alone Plan to a Unified Plan for PY 2010 should advise the Federal Coordinator of its intention upon receipt of this TEGL.

10. Negotiation of Levels of Performance. In 2009, states had the option of continuing to use the goals negotiated for PY 2008 or negotiating new performance goals for PY 2009. A similar policy will prevail for PY 2010. States may continue to use the PY 2009 goals, or negotiate new goals for PY 2010. States that choose to extend their negotiated PY 2009 goals for an additional year should notify the appropriate Regional Administrator of their intention. If a state wishes to negotiate new goals, the state must submit proposed levels of performance to the appropriate Regional Administrator. Those states submitting a modification that covers PY 2010 can include the proposed levels with the modification request.

The Regional Administrator's letter advising the state of the agreed-upon goals will constitute a modification to the State Plan. For subsequent revisions to performance goals during the life of the State Plan, the Regional Administrator's letter advising the state of the agreed upon goals will also constitute a modification to the State Plan. The state must ensure that the agreed-upon goals are included in the state's official copy of the State Plan, and that any published State Plan, on the state's Web site or through other forums, includes the agreed-upon goals. ETA will incorporate the agreed-upon goals into the Regional and National Office copies of the State Plan.

States should also note that the proposed levels of performance are subject to the same public review and comment requirements that apply to State Plans and Plan modifications. When the state submits the proposed levels to ETA, the state should confirm that it has made the proposed levels available to the public for review and comment. States that choose to extend their negotiated PY 2009 goals for an additional year are encouraged to notify the public of their intent.

Further guidance about the negotiation of performance goals for PY 2010 is being issued separately. Guidance regarding the negotiation of measures of One-Stop Career Center services to Veterans, and specific outcome measures for the staff supported by Jobs for Veterans State Grants will be issued separately by the Veterans' Employment and Training Service.

11. Regression-Based Performance Approach. Those states that choose to negotiate new performance goals for PY 2010 also have the option to participate in a pilot to use regression analysis in the negotiation process for setting performance levels. ETA seeks volunteer states to formulate an implementation plan for using regression analysis in the negotiation of performance levels. Optional implementation in PY 2010 will allow volunteer states to work with ETA to more fully refine the regression model, design a web-accessible site, and support technical assistance and training efforts on the use of regression analysis as we move towards full implementation of the use of regression analysis as part of the negotiations process for PY 2011.

States voluntarily adopting the new approach in PY 2010 will use model-derived performance goals that will serve as the centerpiece for Federal-state performance levels negotiations. ETA encourages these "first round" states to apply the adjustment factor results of the regression model in negotiating levels for local areas as well. A regression-based approach to negotiating performance levels will be implemented in all states and local workforce investment areas in PY 2011. ETA's implementation of this new approach represents a phase-in strategy of the new goal-setting approach in volunteer states and enables ETA to work with these states to identify implementation challenges before the initiative goes to national scale the following year. This approach establishes a more unified, data-driven process for setting performance expectations that factor in personal characteristics and adjusts performance expectations to align with economic conditions and other factors that influence labor market outcomes.

Additional information about the negotiation of performance goals for PY 2010 will be forthcoming in a separate TEG. TEG. No. 09-08, Change 1, explains how regression analysis was used to establish revised national performance targets required for the Government Performance and Results Act.

12. Tools and Resources. ETA maintains web-based resources that may facilitate the development of State Plans and/or modifications. ETA posts WIA/W-P strategic planning resources online at www.doleta.gov/usworkforce/wia-planning. We also encourage states to take advantage of the information available at Workforce3one, an interactive knowledge sharing and learning platform, available at www.workforce3one.org.

13. Inquiries. Please direct questions regarding this notice and instructions to the appropriate Regional Office. States may also submit questions on the planning or waiver approval process by e-mail to WIA.PLAN@DOL.GOV. Responses to questions raised about the content of this TEGL will be posted at www.doleta.gov/usworkforce/wia-planning.