

U.S. Department of Labor

APR 29 2010

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



The Honorable Mark Parkinson
Governor of Kansas
Capitol Building
Room 212S
Topeka, Kansas 66612-1590

Dear Governor Parkinson:

We are pleased to be able to respond positively to your request for two waivers of statutory and regulatory requirements under the Workforce Investment Act (WIA) received on March 29, 2010. This 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). 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.

Requested Waiver: Waiver of WIA Section 134(a) to permit local areas to use a portion of local funds for incumbent worker training.

The State is requesting a waiver to permit local area formula funding to be used for statewide activities, specifically incumbent worker training. The State is granted this waiver through June 30, 2010. Under this waiver, the State will be permitted to use up to 15 percent of local Dislocated Worker funds and up to 5 percent of local Adult funds for incumbent worker training only as part of a lay off aversion strategy. Use of Adult funds must be restricted to serving low-income adults under this waiver. ETA believes limiting incumbent worker training to the specified level and requiring it to be a part of lay off 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.

Local areas must continue to conduct the required local employment and training activities at WIA section 134(d), and the State is required to report performance outcomes for any individual served under this waiver in the Workforce Investment Act Standardized Record Data system (WIASRD). This waiver approval applies to both WIA formula funds and funds made available under the American Recovery and Reinvestment Act of 2009 (ARRA).

Requested Waiver: 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 requesting a waiver to permit use of rapid response funds for incumbent worker training. The State is granted this waiver through June 30, 2010. 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. ETA believes limiting incumbent worker training to lay off 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. 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). As stated in ETA Training and Employment Guidance Letter No. 14-08, Section 19, issued on March 18, 2009, this waiver does not apply to funds made available through ARRA.

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 TEGP No. 14-00, Change 3, the State should address the impact these 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 to achieve better workforce outcomes. If you have any questions related to the issues discussed above, please contact Byron Zuidema, the Regional Administrator for Region V, at 312-596-5403 or Zuidema.Byron@dol.gov.

Sincerely,



Jane Oates
Assistant Secretary

Enclosure

cc: Caleb D. Asher, Deputy Secretary of Workforce Services, Kansas Department of Commerce
Byron Zuidema, Regional Administrator, ETA Chicago Regional Office
Linda Ortolano, Federal Project Officer for Kansas, ETA Chicago Regional Office



DEPARTMENT OF COMMERCE

Mark Parkinson, Governor
William R. Thornton, Secretary

KANSASWORKS.com
KansasCommerce.com

March 19, 2010



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

Byron Zuidema
Regional Administrator
USDOL-ETA-Region 5
230 South Dearborn Street, 6th floor
Chicago, IL. 60604

Dear Ms. Sten and Mr. Zuidema:

On behalf of Governor Parkinson, I am submitting the attached waiver for reconsideration to utilize WIA funds for Incumbent Worker training for the sole purpose of layoff aversion. We believe the waiver will assist us in preserving jobs in Kansas and upgrading skills for employees. The waiver was originally submitted April 7th, 2009, covering a more broad-based approach to incumbent worker training. This waiver was not approved per letter from Jane Oates received on November 13th, 2009, but is now being resubmitted with the intention of utilizing the funds solely for layoff aversion.

A draft of this waiver was posted on the *Public Comment* page of the KANSASWORKS Policy website for 14 days. An e-mail was delivered to the public comment listserv announcing the posting of the waiver. During those 14 days, there were no comments received.

If you have any questions related to this waiver, please contact David Brennan at (785) 296-7715 or e-mail dbrennan@kansascommerce.com

Sincerely,

Caleb D. Asher
Deputy Secretary of Workforce Services

Attachment

Cc: Linda Ortolano
David Brennan

Kansas Waiver Plan

Utilizing WIA Funds for Incumbent Worker Training

The Kansas Department of Commerce (Commerce), as the administrative entity for the Workforce Investment Act (WIA) in the state of Kansas, is requesting the flexibility to utilize up to 20 percent of funds reserved for rapid response activities and up to 20 percent of WIA local formula funds (adult and dislocated worker) as "local activity funds" to operate an incumbent worker training program for the purpose of lay off aversion.

The following are key pieces of Kansas's current layoff aversion plan:

- **Economic Development linkages** –open communication with Economic Development linkages, such as these listed:
 - Kansas Economic Development Alliance (KEDA) - an organization of professionals and volunteers involved in economic growth and development;
 - Business Executive and Industry Liaisons (BIELs);
 - Commerce Business Recruitment and Retention Division representatives and;
 - Local Economic Development RepresentativesWe are working hard to strengthen our relationships with these and other ED groups so when they have pertinent information about companies in trouble, they will convey that information to us and we can begin working with the companies.

- **Utilizing sources of information to analyze and anticipate what is happening in certain industries or among certain firms** – LMIS data is an area where we have had continuous discussions in the past several months. A group of Commerce and Labor staff have been meeting on a regular basis to discuss and help develop new tools to assist in this area.

- **Shared Work Program** – Kansas offers the Shared Work program as an alternative for employers faced with a reduction in workforce, allowing them to divide the available work, or hours of work, among a specified group of affected employees in lieu of a layoff. Shared Work allows the employees to receive a portion of their unemployment insurance benefits while working reduced hours. From January 1st, 2009 -- December 31st, 2009, 509 Kansas employers took advantage of this strategy, a dramatic increase from 2008.

- **Incumbent Worker Training** – The Kansas Industrial Retraining (KIR) program is a state-funded program and is designed to assist companies who are restructuring or retraining their workforce. One of the requirements for employers to receive a KIT grant is they must demonstrate how the employees to be trained would likely be displaced because of obsolete or inadequate job skills and knowledge. The state of Kansas would like to use WIA funds for Incumbent Worker Training to work in conjunction with the state funds as the state funds are more restricted and funding is limited.

Incumbent Worker Training is also a key piece of this plan. Now more than ever, there is a need for Kansas companies to upgrade the skills of their employees in order to remain competitive and not face additional layoffs or close their doors.

Statutory Regulation to be Waived

Kansas is requesting a waiver to permit the state to use up to 20 percent of the funds reserved for rapid response activities at WIA Section 133(a)(2), to provide Incumbent Worker Training authorized at WIA Section 134(a)(3)(A), with the exception of administration, at WIA Section 134(a)(3)(A)(i).

Also, Kansas requests WIA Section 134(d)(3)(A) to be waived to allow the Local Boards, at their discretion, to spend up to 20 percent of funds allocated under WIA Section 133(b) to carry out incumbent worker training programs.

WIA Section 134(d)(3)(A) effectively blocks the use of formula funds for incumbent worker training. This waiver will be utilized for layoff aversion.

Action the State has taken to remove barriers

There are no known state or local statutory or regulatory barriers to implementing this waiver.

Goals and Expected Programmatic Outcomes

- The most obvious goal is to avert layoffs and closures for businesses in Kansas. With the large number of businesses taking advantage of the Kansas Shared Work program, it's evident that businesses are willing to do whatever they can to keep their employees.
- The waiver will allow Kansas businesses to remain competitive in this very difficult economy. According to the Kansas Department of Labor (KDOL), Kansas businesses lost 60,000 jobs in 2009, with the highest losses in manufacturing, professional and business services, and trade, transportation and utilities. Within these industries, the majority of losses occurred in aerospace production, administrative support services and retail trade. Incumbent worker training may not have been able to prevent all these losses, but it's a great option to reduce the number of layoffs.
- Incumbent Worker training allows employees to upgrade their skills or transform their skill set in order to retain employment. For example, many aviation employees have lost their jobs, but those that remain could benefit from gaining new skill sets such as those associated with working with composites or other green opportunities.
- Kansas has a nationally recognized relationship between WIA and Registered Apprenticeship. The approval of this waiver would allow Local Areas to continue leveraging resources to make sure employees who are apprentices do not lose their jobs and in turn, do not disrupt their apprenticeship training program. The ability to create

incumbent worker training for those industries typically using Registered Apprenticeship, such as the building trades is crucial.

- Incumbent Worker training in Kansas has opened the door for Local Workforce representatives to work with businesses that had no idea what services were available to them including: candidate recruitment, applicant screening, proficiency testing, human resource assistance, on-the-job training assistance, and customized training assistance. This waiver would continue to increase the number of businesses utilizing all services available to them.
- In turn, it opens the door to providing more services to the employees. Other One-Stop Career Center services include: Career assessments, career counseling, job search assistance, labor market information, resume writing assistance, interviewing assistance, basic skills workshops, veteran services, supportive services that may include transportation, childcare, dependent care, housing, etc. and needs related payments.

Companies interested will be asked to fill out an application and will need to meet the following criteria:

- **Must be for the purpose of averting layoffs**
- Should also be for the purpose of improving employee retention, increasing employee earning potential through the upgrade of skills and to assist in staying competitive.
- Must have been in operation in Kansas for a minimum of three years prior to application date to be eligible for grant funding.
- Must have at least one full-time employee.
- Must demonstrate financial viability and must be current on all federal, state, and local obligations.
- Is compliant with existing employment, health, and safety laws and regulations.
- Employees must be Kansas residents and employed in Kansas.
- Provides a 50% matching cash contribution to the project (50 percent cash match must be from the business' resources. The match cannot come from federal, state, other public or private funding, or in-kind contributions); Match may include those extraordinary costs associated with the costs of employing and training the incumbent worker (i.e., wages, instruction, equipment/materials required for training) but does not include normal fixed costs of operation (i.e. overhead, workplace facilities, utilities, equipment materials used to produce goods for sale).
- Demonstrates a commitment to retaining operations and employees in Kansas; and
- Is willing to support and build the local workforce investment system through continued use of programs and services under the oversight of the Local Board

The application will be reviewed to determine if all criteria are met and are in line to help us meet our goals.

Types of training include:

- a. Customized occupational training designed to meet the special requirements of an employer (including a group of employers) conducted with a commitment by the employer to continue to employ an individual upon successful completion of the training.
- b. Customized on-the-job training relating to the introduction of new technologies, introduction to new production or service procedures, or upgrading to new jobs requiring additional skills.
- c. Any combination of on-the-job training and classroom instruction necessary to provide the worker the necessary skills to perform the job or upgrade their skills.

An incumbent worker may be eligible for training services if he/she:

- a. Is identified by his/her employer to be in need of skills upgrade training to retain employment;
- b. Chooses to voluntarily upgrade his/her skills; and
- c. Will receive an income of no less than 100% of the current wage upon successful completion of training

Note: Temporary employees cannot be included in the training until the business receiving the grant has hired them and the recipient business is the employer of record.

Local Areas choosing to carry out incumbent worker training programs must develop local policy for such training and provide this policy in their Local Workforce Plan.

Individuals Affected

This waiver will benefit participating employers, incumbent workers, and local workforce areas.

State Process

Kansas will take the following steps toward implementation of this waiver:

- *Monitor the Progress in Implementing the Waiver*

The waiver will be incorporated into a state policy distributed to all local areas. All activity related to this policy will be monitored to ensure funds utilized for incumbent worker activities are for the purpose of layoff aversion. This includes Commerce and Local Area staff reviewing all incumbent worker applications prior to approval, observing the projects throughout and surveying the projects after completion.

An MIS report will be set up to specifically track Incumbent Worker projects. This report will track pre and post earnings and employment retention at first, second and third quarter after exit, to ensure earnings were increased and employees were retained. Also, each company participating will be required to provide quarterly progress reports as well as a project summary addressing how they are meeting and have met the specific requirements of their initial application.

- *Provide any Local Board Affected by the Waiver an Opportunity to Comment on the Request*

A two-week comment period will be given to allow Local Boards an opportunity to provide comments on the waiver request. Copies of any comments received will be forwarded to the USDOL regional office in Chicago.

- *Ensure Meaningful Public Comment on the Waiver Request*

A two-week comment period will be given to allow the public an opportunity to provide comments on this request. Copies of any comments received will be forwarded to the USDOL regional office in Chicago.