

ALABAMA WORKFORCE INVESTMENT SYSTEM

Alabama Department of Economic and Community Affairs
Workforce Development Division
401 Adams Avenue
Post Office Box 5690
Montgomery, Alabama 36103-5690

May 22, 2013

GOVERNOR'S WORKFORCE DEVELOPMENT DIRECTIVE NO. PY 2012 – 12, Change 1

SUBJECT: Training and Employment Guidance Letter (TEGL)

1. **Purpose.** This transmits the following TEGL:

<u>Number</u>	<u>Date</u>	<u>Subject</u>
27-12	05/10/13	Funds Administration Flexibility for Workforce Investment Act of 1998 (WIA) Title I and Wagner-Peyser Act of 1933 (W-P Act) Funds

2. **Discussion.** TEGL 27-12 articulates the flexibility available for WIA Title I and W-P Act programs that may be helpful for managing Program Year (PY) 2013 sequestration and rescission-related formula funding reductions.

TEGL No. 25-12, Workforce Investment Act (WIA) Adult, Dislocated Worker and Youth Activities Program Allotments for Program Year (PY) 2013; Final PY 2013 Allotments for the Wagner-Peyser Act Employment Service Program Allotments; and Workforce Information Grants to States Allotments for PY 2013, announced the state allotments for PY 2013 for the WIA Title I and W-P programs. As discussed in that TEGL, the allotments reflect funds appropriated in Title I of Division F of the Consolidated and Further Continuing Appropriations Act, 2013, Pub. L. 113-6, signed into law March 26, 2013. This Act incorporated a mandatory across the board (ATB) rescission of 0.2 percent impacting all Federal FY 2013 discretionary funding (including both the FY 2013 "advance" funding made available on October 1, 2012 and the PY 2013 "base" appropriation available on July 1, 2013). Additionally, all FY 2013 discretionary program funding is subject to the sequestration order required by Section 251A of the Balanced Budget and Emergency Deficit Control Act, as amended. Both the rescission and sequestration reductions impact the PY 2013 funding for the WIA and W-P Act programs.

Funding reductions will be applied during the final quarter of Fiscal Year 2013, which is the first quarter of PY 2013, July 1 through September 30, 2013. Many states and local workforce investment areas (LWIAs) will be significantly affected. The Employment and Training Administration (ETA) has received a number of questions from system stakeholders about what flexibility states and LWIAs may have to manage the effects of the funding cuts and mitigate their negative consequences. The attached TEGL 27-12 seeks to respond to these

GOVERNOR'S WORKFORCE DEVELOPMENT DIRECTIVE NO. PY 2012-12, Change 1

questions in a Question-and-Answer (Q &A) format by clarifying existing flexibility or flexibility available through waivers.

3. Action.

This guidance provides information by topical area on existing flexibility and flexibility states may acquire through an approved waiver. ETA's waiver authority and process are prescribed by WIA and its regulations (Section 189(i)(4) and 20 CFR 661.420-430). This waiver authority does not provide ETA flexibility to grant blanket waivers to states, and states must follow the process required by law. Many states have taken advantage of the flexibility afforded by waivers. States should: 1) examine waivers that the state already has in place and ensure they are being communicated to local areas and fully utilized, 2) examine other waivers ETA has approved, and 3) consider whether any additional waivers may be useful. For reference, a Table of Waiver Decisions is attached to this TEGL. The table includes all recent waiver policies, some of which offer funding flexibility and are discussed within the attached TEGL 27-12.

4. Contact.

Questions regarding this TEGL should be directed to Sara Calhoun, Workforce Development Division at Sara.Calhoun@ADECA.Alabama.gov or 334.353-1632.


Steve Walkley, Division Chief
ADECA, Workforce Development Division

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION WIA/W-P
	CORRESPONDENCE SYMBOL OWI
	DATE May 10, 2013

ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 27-12

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

FROM: JANE OATES /s/
Assistant Secretary

SUBJECT: Funds Administration Flexibility for Workforce Investment Act of 1998 (WIA) Title I and Wagner-Peyser Act of 1933 (W-P Act) Funds

1. **Purpose.** The purpose of this Training and Employment Guidance Letter (TEGL) is to articulate flexibility available for WIA Title I and W-P Act programs that may be helpful for managing Program Year (PY) 2013 sequestration and rescission-related formula funding reductions.

2. **References.**

- TEGL No. 25-12, Workforce Investment Act (WIA) Adult, Dislocated Worker and Youth Activities Program Allotments for Program Year (PY) 2013; Final PY 2013 Allotments for the Wagner-Peyser Act Employment Service Program Allotments; and Workforce Information Grants to States Allotments for PY 2013
- TEGL No. 26-09, Workforce Investment Act (WIA) Waiver Policy and Waiver Decisions for PY 2009 and 2010 and the Related Change 1
- TEGL No. 11-12, Using Funds Authorized Under Section 7(a) of the Wagner-Peyser Act of 1933 for Intensive Services as Defined by the Workforce Investment Act
- TEGL 10-09, Implementing Priority of Service for Veterans and Eligible Spouses in all Qualified Job Training Programs Funded in whole or in part by the U.S. Department of Labor (DOL)
- Training and Employment Notice (TEN) No. 27-12, Fiscal Year (FY) 2013 Projected Allotments
- TEN No. 31-11, The Rapid Response Framework
- TEN No. 32-11, Rapid Response Self-Assessment Tool
- TEN No. 09-12, Layoff Aversion in Rapid Response Systems
- Full-Year Continuing Appropriations Act, 2013, Title I of Division F, and Division G of the Consolidated and Further Continuing Appropriations Act, 2013, Pub. L. 113-6
- Department of Labor Appropriations Act, 2012, Division F of the Consolidated Appropriation Act, 2012, Pub. L. 112-74

RESCISSIONS None	EXPIRATION DATE Continuing
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- Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA), Pub. L. 99-177, as amended by the Budget Control Act of 2011, Pub. L. 112-25
- Workforce Investment Act of 1998, as amended (29 U.S.C 2801, et seq.)
- Workforce Investment Act of 1998 regulations, 20 CFR Parts 660 through 667, and 671.
- Wagner-Peyser Act, as amended (29 U.S.C. 49, et seq.);
- Wagner-Peyser Regulations, 20 CFR Part 652
- The Jobs for Veterans Act (JVA) of 2002, Pub.L 107-288, Section 2(a) (38 U.S.C. 4215).
- ETA Workforce Investment Act Waiver Database, Accessed June 13, 2012, www.waivers.doleta.gov

3. **Background.** TEGL No. 25-12, *Workforce Investment Act (WIA) Adult, Dislocated Worker and Youth Activities Program Allotments for Program Year (PY) 2013; Final PY 2013 Allotments for the Wagner-Peyser Act Employment Service Program Allotments; and Workforce Information Grants to States Allotments for PY 2013*, announced the state allotments for PY 2013 for the WIA Title I and W-P programs. As discussed in that TEGL, the allotments reflect funds appropriated in Title I of Division F of the Consolidated and Further Continuing Appropriations Act, 2013, Pub. L. 113-6, signed into law March 26, 2013. This Act incorporated a mandatory across the board (ATB) rescission of 0.2 percent impacting all Federal FY 2013 discretionary funding (including both the FY 2013 “advance” funding made available on October 1, 2012 and the PY 2013 “base” appropriation available on July 1, 2013). Additionally, all FY 2013 discretionary program funding is subject to the sequestration order required by Section 251A of the Balanced Budget and Emergency Deficit Control Act, as amended. Both the rescission and sequestration reductions impact the PY 2013 funding for the WIA and W-P Act programs.

Funding reductions will be applied during the final quarter of Fiscal Year 2013, which is the first quarter of PY 2013, July 1 through September 30, 2013. Many states and local workforce investment areas (LWIAs) will be significantly affected. The Employment and Training Administration (ETA) has received a number of questions from system stakeholders about what flexibility states and LWIAs may have to manage the effects of the funding cuts and mitigate their negative consequences. This TEGL seeks to respond to these questions in a Question-and-Answer (Q &A) format by clarifying existing flexibility or flexibility available through waivers.

4. **Funds Administration Flexibility.** This section provides information by topical area on existing flexibility and flexibility states may acquire through an approved waiver. ETA’s waiver authority and process are prescribed by WIA and its regulations (Section 189(i)(4) and 20 CFR 661.420-430). This waiver authority does not provide ETA flexibility to grant blanket waivers to states, and states must follow the process required by law. Many states have taken advantage of the flexibility afforded by waivers. States should: 1) examine waivers that the state already has in place and ensure they are being communicated to local areas and fully utilized, 2) examine other waivers ETA has approved, and 3) consider whether any additional waivers may be useful. See Section 7 of this TEGL for more information on WIA waiver authority, the waiver application process, ETA’s waiver policy,

and other relevant details. For reference, a Table of Waiver Decisions is attached to this TEGL. The table includes all recent waiver policies, some of which offer funding flexibility and are discussed below.

A. Governor's Reserve for Statewide Activities

- i. ***What flexibility exists within the law for the Governor's reserve?*** WIA Sections 128(a) and 133(a) allow a Governor to reserve up to 15 percent of WIA Youth, Adult, and Dislocated Worker allotments for required and allowable statewide activities and for administration. However, DOL's FY13 appropriation provides that a maximum of five percent of a state's PY 2013 allotment may be reserved from these funding streams for those purposes. For many states, the full five percent is necessary to conduct required statewide activities. However, the Governor maintains the flexibility to reserve less than the full five percent and doing so could enable the state to direct more funds to LWIAs.

A state may wait and take all of its administrative and statewide activities reserve funds from the FY 2014 advance allotments as long as the total amount does not exceed five percent of the state's entire allotment – i.e. the sum of the base (PY 2013) and advance (FY 2014) allotments. While the law allows for the pooling of the funds reserved for these purposes from the separate funding streams, costs incurred prior to the October 1 federal obligation of FY 2014 funds cannot be paid using FY 2014 funds. The state must use PY 2013 base funding, and/or carry over from previous years to cover obligations and expenditures incurred from July 1 through September 30, 2013, since WIA funds have a three year period of expenditure once obligated to the states.

- ii. ***Are waivers available related to statewide activities?*** Yes. Due to the ongoing reduction in the Governor's reserve funds, ETA realizes that some states may be unable to conduct all required activities due to a lack of funding. As a temporary measure, and in order to help states prioritize the activities that are more essential to the functioning of their workforce systems, states may request waivers to exempt them from the requirements to carry out some of the required statewide activities described at 20 CFR 665.200(b)-(i) that would have been possible without the reduction in PY 2013 funds.

ETA will review and consider waiver requests on a case-by-case basis and in the context of each state's unique circumstances. Waiver requests must meet the requirements of 20 CFR 661.420(c). These requests also must include a justification that describes estimated costs to carry out the required activity for which the waiver is needed; how statewide funds are being used (for both required and allowable statewide activities); how funds are being prioritized across activities; and the extent to which the funding levels are insufficient to cover the activity for which a waiver is requested. The request must also address the anticipated impact of not funding the activity, and whether it may directly affect WIA participant services. For states that were approved for statewide waivers in PY 2012, a request to extend them for PY 2013 may be submitted rather than a full waiver plan. Some states' PY 2012

statewide waiver requests were not approved. Sequestration may result in a change in the state's circumstances. A state may choose to resubmit these waiver requests. Requests will be reviewed again in the context of the state's current funding levels and required financial documentation.

ETA is unlikely to approve a waiver of the following activities that are central to state management of funds:

- operating fiscal and management accountability information systems (WIA Section 134(a)(2)(B)(vi) and 20 CFR 665.200(i));
- 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 CFR 665.200(b)(1)), and youth activities (20 CFR 665.200(b)(4)); and
- providing technical assistance to poor performing LWIAs (WIA Section 134(a)(2)(B)(iv) and 20 CFR 665.200(f)).

Also note that in PY 2011 and 2012, ETA approved waivers of 20 CFR 665.200(b)(3) to exempt the state from the requirement to disseminate training provider performance and cost information (WIA Section 122). In weighing the relatively low costs associated with dissemination against the benefit of sharing training provider information with customers, ETA has decided to discontinue approval of this waiver in PY 2013. This waiver will remain in effect until June 30, 2013 for states that are currently granted approval.

B. Rapid Response Activities

- i. ***Do states have flexibility in determining the percentage of WIA Dislocated Worker funds that are reserved for Rapid Response activities?*** Yes. As long as they are meeting the requirements for Rapid Response under the WIA, and as provided in 20 CFR 665.310, states have the discretion to reserve *up to* 25 percent of their annual formula Dislocated Worker allotment for Rapid Response activities (see WIA Section 133(a)(2)). Many states currently reserve less than 25 percent based on their needs each year. Funds not reserved for Rapid Response activities remain part of the state's annual formula Dislocated Worker allotment and must be allocated to all local areas based on the state's dislocated worker allocation methodology.

In addition, states have flexibility in how they reserve the funds needed for Rapid Response. States may reserve funds for Rapid Response from the PY 2013 base allotment (available July 1) and the FY 2014 advance allotment (available October 1), or they may choose to reserve no funds from the PY allotment and allow more funds to be allocated to the LWIAs for the first three months of the PY. In this instance, states would then reserve the full amount needed for Rapid Response services from the FY advance allotment on October 1, 2013.

ETA encourages states to consider the needs of all programs, but also to consider the significant flexibility in the use of the Rapid Response funds (discussed below) when determining what level of funding to reserve at the state level for Rapid Response activities.

- ii. ***What flexibility exists in the services that can be provided using Rapid Response funding?*** As discussed above, states may reserve up to 25 percent of their state Dislocated Worker allotment for Rapid Response activities. Regulations at 20 CFR 665, Subpart C describe the required and allowable Rapid Response activities. These regulations indicate that Rapid Response funds are among the most flexible available to the workforce system. They may be used for a wide variety of employment and training activities, to provide services to businesses, as well as to develop strategies and carry out activities for layoff aversion. Funds also may be used to provide additional resources to LWIAs (see Q&A iii below).

States should ensure that Rapid Response funds are adequate to support the full range of strategies and activities that are essential for Rapid Response to be the important resource it can be for workers, businesses, and communities. States should examine their Rapid Response systems and focus on innovative and flexible strategies that provide widespread benefits before they begin using Rapid Response funds for other purposes.

Some examples of allowable and innovative strategies and activities include:

- Connecting employers and workers with short-term, customized, or other training or apprenticeships before or after layoff to ensure appropriate skills for new employment;
- Leveraging Short-Time Compensation (STC) (also known as workshare or shared work) programs, where applicable, as a layoff aversion or business engagement strategy (see UIPL 22-12 for more information on STC);
- Facilitating incumbent worker training for eligible workers based on state or local rules, and/or providing the training with the appropriate waiver (see Q&A iv below);
- Identifying heavily concentrated industries and sectors and related training needs in the geographic area;
- Engaging in proactive measures, such as business visitation or layoff forecasting programs, to identify indicators of potential economic transition and training needs in growing industry sectors or expanding businesses;
- Conducting talent transfer events, or holding reemployment boot camps connecting businesses in growing industries or sectors with available talent;
- Developing, implementing, maintaining, and publicizing a state or local layoff aversion policy;
- Creating and sustaining effective partnerships with a wide range of organizations to support allowable strategies and activities;

- Gathering data and intelligence related to economic transition trends within industries, communities, or at specific employers, and planning strategies for intervention; or
- Developing early warning networks and systems using data and intelligence gathered.

States that wish to learn more about Rapid Response and the significant flexibility allowable in the use of those funds should review past guidance on Rapid Response, including TEGL 30-09 and TENs 31-11, 32-11, and 09-12.

- iii. ***Can Rapid Response funds be targeted to LWIAs that need them instead of being provided by formula?*** Yes, states may provide Rapid Response funds to targeted LWIAs that evidence a need for additional funds through the mechanism of “additional assistance.” The regulations at 20 CFR Section 665.340 provide the context for additional assistance: once states have reserved an appropriate amount of funding for Rapid Response activities, they are permitted to use the remainder of the funds available for Rapid Response to provide additional assistance to LWIAs “that experience increased numbers of unemployed individuals due to natural disasters, plant closings, mass layoffs or other events” but for which there are not adequate funds available at the local level.

Per 20 CFR 665.340, funds provided to LWIAs as additional assistance are intended for “provision of direct services to participants (such as intensive, training, and other services).” WIA allows states to determine the methodology and mechanism by which funds are provided to LWIAs under the additional assistance category.

- iv. ***Will waivers for other uses of Rapid Response funds be considered?*** Although Rapid Response funds are extremely flexible, states may be interested in further expanding this flexibility through the use of specific waivers. ETA may approve waivers to use Rapid Response funds for statewide incumbent worker training, consistent with the Attachment, as part of a layoff aversion strategy. Other waivers that are designed to develop innovative strategies and approaches to serve dislocated workers, or otherwise expand services to dislocated workers (including for layoff aversion strategies and activities designed to prevent layoffs or minimize the duration and impacts of unemployment) may be submitted for consideration. In addition to meeting the requirements of 20 CFR 661.420(c), such waiver requests must demonstrate that the activities: a) are not already permitted with Rapid Response funds; b) funding levels are insufficient to cover the activity for which a waiver is requested; and, c) will directly benefit workers and businesses in the state. ETA will not grant a waiver to use the Rapid Response funds for administrative or non-programmatic activities.

C. Allocation and Reallocation from State to LWIAs

- i. ***May states adjust their local formulas for allocating Adult, Dislocated Workers, and Youth funds?*** Under the provisions relating to sub-state formula allocations

under title I of WIA there is some flexibility available to states to develop and adjust formula factors.

The most flexibility is provided under the Dislocated Worker formula, where the entire formula is determined by the state. WIA requires that the formula include: (1) insured unemployment data; (2) unemployment concentrations; (3) plant closing and mass layoff data; (4) declining industries data; (5) farmer-rancher economic hardship data, and (6) long-term unemployment data (Section 133(b)(2)(B)). The WIA implementing regulations at 20 CFR 667.130(e)(2)(ii) require that the State Plan describe the data used for this Dislocated Worker formula and the “weights assigned”, and the Plan must explain the state’s decision to use information other than the six factors required by WIA. The State Plan must also describe if the state chooses to omit any of the six information sources. Therefore, the Governor may use other factors in addition to those specified factors, such as performance outcomes or a threshold for percentage of funds expended on training, as long as the additional factors are described and the decision to use them are explained in the State Plan. The Governor may not amend the Dislocated Worker formula more than once for any Program Year.

States have the discretion to distribute a portion of WIA Youth funds based on a formula that includes additional factors. Specifically, up to 30 percent of the funds may be distributed based on factors that relate to: (1) excess youth poverty; and (2) excess unemployment above the state average (Section 128(b)(3)). (The remaining portion (at least 70 percent) must be allocated in accordance with the formula set forth at 20 CFR 667.130(c)(1)). Under the Adult formula, there is similar authority to distribute up to 30 percent of the funds on the basis of a formula relating to: (1) excess poverty and (2) excess unemployment (Section 133(b)(3)). (Likewise, the remaining portion (at least 70 percent) must be allocated in accordance with the formula set forth at 20 CFR 667.130(d)(1)). Both of these discretionary formulas for Youth and Adult funds must be developed by the State Workforce Investment Board and approved by ETA as a modification of the State Plan.

States must make WIA Adult, Dislocated Worker and Youth funds available to local areas no later than 30 days after ETA makes funds available to states, or seven days after the date the local plan for the LWIA is approved, whichever is later (WIA Section 182(e)). For Program Year 2013 the remaining time available for states to adjust their local funding formulas is relatively limited. States should also consider whether this flexibility may be helpful for future years.

- ii. ***What flexibility exists regarding state recapture of LWIA formula funds? (A separate question below addresses ETA recapture of state funds)*** WIA Sections 128(c) and 133(c) and 20 CFR 667.160, provide that the Governor may recapture from local areas unobligated balances in excess of 20 percent of the prior year allocation. However, states are not required to recapture such unobligated balances. ETA encourages states to work closely with their LWIAs and use judgment in decisions related to recapturing unobligated funds. Given the impact of the funding

cuts, states may consider providing local areas the opportunity to use unobligated balances to alleviate the PY 2013 funding shortfalls. Should a state decide to recapture unobligated balances, ETA does not support waivers to allow states to recapture funds on a basis other than that prescribed by WIA.

Furthermore, 20 CFR 667.107 requires the state to recapture funds that are unexpended by LWIAs in their second year of availability. ETA will not waive this requirement. States may reallocate such unexpended funds to any local areas that fully expended the funds within the two-year period or the funds may be used for statewide projects.

- iii. ***Are waivers available for reallocation of unobligated local formula funds?*** ETA will consider a waiver of the reallocation provisions at WIA Sections 128(c)(3) and 133(c)(3), and 20 CFR 667.160(c) to permit a state to reallocate recaptured unobligated funds according to state-developed criteria. Under the waiver, a state would have the discretion to consider additional factors in determining local area eligibility for a reallocation of recaptured funds. States must make public their reallocation procedure and policy, as well as any future changes to that policy.

ETA will consider reallocation waiver requests on a case-by-case basis. A state requesting this waiver must meet the requirements of 20 CFR 661.420(c). Additionally, the state must provide justification as to why it proposes a waiver of the statutory requirement to reallocate recaptured funds based on the prescribed WIA formula, and assurances that an undue burden would not be imposed on local areas. States must propose an alternative policy for reallocation that is based on objective criteria, and demonstrate that the alternative policy was created in a transparent manner with adequate opportunity for comments from local boards, stakeholders, and the public. States should describe in their request the actions that have been taken to ensure local areas promptly obligate and expend funds within required timeframes, and to reduce as much as possible the amount of local area funds subject to recapture. This waiver only applies to reallocation provisions, and not to the recapture provisions at WIA Sections 128(c)(2) and 133(c)(2), and 20 CFR 667.160.

D. Adult and Dislocated Worker Funds Transfer

- i. ***What flexibility exists to transfer funds between local Adult and Dislocated Worker funding streams?*** A local Board may transfer up to 30 percent of Adult employment and training funds and up to 30 percent of Dislocated Worker funds for a Fiscal Year between Adult employment and training and Dislocated Worker employment and training activities. This same flexibility does not apply to WIA Youth funds, which cannot be transferred to Adult or Dislocated Worker in the same manner.
- ii. ***Is additional transfer flexibility available through a waiver?*** In recent years, ETA has approved waivers of WIA Section 133(b)(4) to permit local areas to increase the allowable transfer amount between Adult and Dislocated Worker funding streams allocated to an LWIA to up to 50 percent. Many states already have this approved waiver in place.

In light of the funding reductions due to the sequestration and ATB rescission, ETA will consider state waiver requests of the transfer thresholds to up to 75 percent on a case-by-case basis. In addition to the required information described in Section 7 of this TEGL, states wishing to request a higher transfer level must provide evidence as to why a 50 percent transfer is inadequate, identify the specific LWIAs for which the higher level of funding is needed, and provide supporting financial documentation.

E. Wagner-Peyser

i. ***What is the allowable flexibility under Wagner-Peyser 7(a) funds?***

In accordance with 20 CFR 652.206, funds authorized for activities under Section 7(a) of the Wagner-Peyser Act must be used to provide core services. After the State has reserved enough funds for the provision of core services, states have discretion to use those funds to provide intensive services (as defined in WIA Section 134(d)(3)(C) and discussed at 20 CFR 663.200) consistent with the needs of job seekers and businesses in the local labor market. As addressed in TEGL No. 11-12, these intensive services include comprehensive and specialized assessments, development of an individual employment plan, group and individual counseling, case management for participants seeking training services, and short-term prevocational services. As stated in 20 CFR 663.200, states may also provide literacy activities related to basic workforce readiness, relocation assistance, internships, and work experience may be provided, based on an assessment or individual employment plan.

F. Timing of State Oversight Activities

- i. ***Do states have flexibility to postpone required administrative activities?*** States should review schedules for statewide administrative, oversight and monitoring activities and, working within statutory and regulatory requirements, make any necessary adjustments to reflect reduced funding availability during the first quarter of PY 2013. For example, on-site monitoring that would have taken place in the first quarter of the Program Year may be postponed to another quarter as long as it takes place within that Program Year.

6. **Areas Where Flexibility is Not Available.** ETA received some questions regarding funds flexibility in areas where it is not available in statute or through a waiver. This section addresses those questions.

A. Prohibited Allotment and Allocation Practices:

- i. ***Will ETA waive the requirement that the Secretary reallocate to eligible states unobligated balances of state allotments that exceed 20 percent of allotments for the prior program year?*** No. ETA recognizes that states may wish to slow spending and to increase carry-over in the first quarter of PY 2013. However, ETA does not believe WIA provides flexibility to the Secretary to not follow the reallocation requirements.

- ii. ***If state general funds or other non-WIA funds are used during the first quarter of PY 2013 to mitigate the impact of the cuts to WIA formula funds, could states “payback” the general or other non-WIA fund source with the FY Advance (October) WIA funds?*** No. The funds in the advance portion of the PY 2013 state allotments are actually FY 2014 funds. Therefore, the advance funds are available for expenditure beginning October 1, 2013. States would not be able to use the FY advance (October 1) funds for obligations or expenditures incurred prior to October 1, 2013 - even if drawn down after October 1 - because the funds were not available at the time the expenditures were incurred. Under appropriation law, funds generally cannot be used before they are available for Federal obligation. Therefore, states must use the advance portion of their allotment for obligations and expenditures occurring on or after October 1, 2013. For obligations and expenditures incurred prior to October 1, 2013, states may use PY 2013 base funding and/or carry over from previous years.
- iii. ***Do states have to allocate the first quarter funds to LWIAs based on formula, or can they allocate the first quarter funds based on need, then adjust the October allocations to bring the total year funding into alignment with the formula?*** States may not allocate the first quarter funds based on need and then adjust the October allocations. WIA Section 182(e) specifies that a Governor must allocate formula funds to the state’s LWIAs no later than 30 days after the date the state receives an allotment. Local area formula allocations are also outside of the WIA waiver authority.
- iv. ***May states move funding on a short term basis amongst each other?*** No. WIA and W-P Act funding must be allotted by formula to states. States may not move funding between states.

7. **Reminders of Service Requirements.** As stated in TEN No. 27-12, ETA reminds states and local areas to be mindful of the following planning elements and activities.

- States must meet quarterly financial and performance reporting requirements in accordance with the WIA statute and regulations;
- During periods of limited funding availability, the WIA Adult program has a statutory requirement to provide priority for intensive and training services to recipients of public assistance and other low-income individuals (WIA Section 134(d)(4)(E); 20 CFR 663.600);
- The Department has issued specific guidelines for applying priority of service for veterans while also applying other statutory priorities. Priority of Service for veterans established in the Jobs for Veterans Act and described in TEGl No. 10-09 remains an active requirement for job training programs funded in whole or in part by the Department of Labor. For further details regarding levels of priority of service, please see TEGl No. 10-09;
- Requirements for Unemployment Insurance (UI) claimants to register with the state’s Employment Service, to search for work as a condition of UI eligibility, and to provide reemployment services to Emergency Unemployment Insurance claimants continue;

- ETA has determined that the services provided to the cohort of program exiters used for calculating PY 2013 performance outcomes will have received services prior to sequestration being implemented. Therefore, there should be little to no impact on PY 2013 performance outcomes. Subsequent guidance will be issued as needed to address concerns with future performance under reduced funding levels;
- WIA requires that a minimum of 30 percent of all youth funds allocated to a local area must be used to provide services to out-of-school youth. (WIA Section 129(c)(4)(A) and 20 CFR 664.320).

8. WIA Waiver Authority and Request Process. As discussed above, states may take advantage of certain flexibilities available through waivers. WIA Section 189(i)(4) authorizes the Secretary to waive certain statutory and regulatory provisions of the WIA. WIA prohibits waivers for certain provisions, including wage and labor standards, nondisplacement protections, worker rights, participation and protection of workers and participants, nondiscrimination, grievance procedures and judicial review, allocation of funds to local areas, eligibility of participants and providers, the establishment and functions of LWIAs and Local Workforce Investment Boards, and procedures for review and approval of Plans. In addition, that provision allows waivers of the statutory and regulatory requirements of Sections 8-10 of the W-P Act, excluding requirements relating to services to UI claimants and veterans, and universal access to basic labor exchange services without cost to jobseekers.

A complete list of waiver policies is included in the Attachment – “Waiver Decisions”. States are encouraged to refer also to TEGL 26-09, *Workforce Investment Act (WIA) Waiver Policy and Waiver Decisions for PY 2009 and 2010* and the related Change 1. While ETA intends, in general, to approve waivers in alignment with the decisions provided in the Attachment and discussed above, ETA will consider all requests on a case-by-case basis. The unique circumstances in a particular state may warrant approval of a waiver request that was previously disapproved in that state or within another state.

Waiver requests must include all of the required elements listed in the WIA regulations at 20 CFR 661.420(c) and discussed in TEGL No. 26-09, Section 9, Waiver and Work-Flex Request Elements and Process. States may use the submission template available at <http://www.doleta.gov/waivers/pdf/waiver-template.doc>, which provides a description of each element and submittal instructions.

- 9. Useful Resources.** Information about waivers, including the waiver request process and waiver decisions, is available ETA’s “waiver portal” at <http://www.doleta.gov/waivers>.
- 10. Inquiries.** States should address their inquiries to their ETA Regional Office.
- 11. Attachment.** Table of Waiver Decisions.

Attachment

Waiver Decisions

Waiver Name	Waiver Description	Policy Decisions, Program Year (PY) 2012
Funds Flexibility		
Adult-Dislocated Worker Transfer	Waiver of WIA Section 133(b)(4) to increase the funds transfer limit between the Adult and Dislocated Worker programs.	ETA will generally approve waivers to allow an increase in the transfer authority of up to 50 percent. States wishing to request a higher transfer level (up to 75 percent) must provide evidence that a 50 percent transfer level is inadequate, identify the specific local areas for which the transferred funding is needed, and provide supporting financial documentation.
Customized Training-Employer Contribution	Waiver of WIA Section 101(8)(C) of the requirement for a 50 percent employer contribution for customized training to permit local areas to use a sliding scale to reduce the contribution based on the size of the business.	ETA will generally approve this waiver.
On-the-Job Training (OJT)- Employer Reimbursement	Waiver of WIA Section 101(31)(B) of the 50 percent limit on reimbursement to employers for OJT to permit local areas to use a sliding scale to increase the reimbursement based on the size of the business.	ETA will generally approve this waiver.

Waiver Name	Waiver Description	Policy Decisions, Program Year (PY) 2012
<p>Local Funds for Incumbent Worker Training (IWT) as a Statewide Activity</p>	<p>Waiver of WIA Section 134(a) to permit local areas to use a portion of local Adult, Dislocated Worker, and Youth funds for statewide activities, specifically IWT.</p>	<p>ETA will generally approve this waiver with the following parameters:</p> <ul style="list-style-type: none"> ▪ Local Adult and Dislocated Worker funds may only be used for IWT as part of layoff aversion and are limited to: <ul style="list-style-type: none"> ○ Not more than 20 percent of local Dislocated Worker funds for IWT ; ○ Not more than 10 percent of Dislocated Worker funds and 10 percent of Adult funds for IWT, or ○ Not more than 10 percent of Adult funds for IWT ▪ Youth funds may <u>not</u> be used for IWT. ▪ ETA will not approve waivers to allow local WIA funds to be used for any other statewide activities.

Waiver Name	Waiver Description	Policy Decisions, Program Year (PY) 2012
Rapid Response Funds for Incumbent Worker Training and Other Statewide Activities	Waiver of WIA Section 134(a)(1)(A) to permit states to use a portion of Rapid Response funds for IWT and other statewide activities.	ETA will generally approve this waiver with the following parameters. <ul style="list-style-type: none"> ▪ Use of not more than 20 percent of Rapid Response funds for IWT as part of lay-off aversion only. ▪ ETA will consider waiver requests to use Rapid Response funds for other statewide activities for the purpose of innovative training and service delivery approaches that enhance services to dislocated workers.
Recapture	Waiver of WIA Sections 128(c)(2) and 133(c)(2), and 20 CFR 667.160 to permit states to recapture local funds midway through the year or recapture of unexpended funds instead of unobligated funds.	ETA will not approve waivers to allow states to recapture funds on a basis other than that prescribed by WIA.
Reallocation	Waiver of the reallocation provisions at WIA Section 128(c)(3) and 133(c)(3) and 20 CFR 667.160 to state to reallocate recaptured funds according to state-developed criteria.	ETA will consider requests for this waiver on a case-by-case basis.
Performance		
Alternative Seasonal Performance Measure	Waiver of WIA Section 136(b)(2)(A)(i)(II) and 20 CFR 666.140 to permit an alternate measure of employment retention for areas of the state where the majority of employment is seasonal.	ETA will consider this waiver on a case-by-case basis.
Common Measures	Waiver of WIA Section 136(b) to permit implementation of, and reporting only for, the common measures in lieu of the current WIA statutory measures.	ETA will generally approve this waiver.

Waiver Name	Waiver Description	Policy Decisions, Program Year (PY) 2012
Incentive Grants to Local Areas	Waiver of WIA Section 134(a)(2)(B)(iii) and 20 CFR 665.200(e) to exempt the state from providing local incentive grants.	ETA will consider this waiver on a case-by-case basis.
Reports as a Statewide Region	Waiver of WIA Section 136(c) and 136(d) to permit the state to report only statewide data.	ETA will consider this waiver on a case-by-case basis.
Workforce Investment Act Standardized Record Data (WIASRD) Elements for Incumbent Worker Training	Waiver of regulations at 20 CFR 666 and 667.300(a) to allow states to discontinue collection of 7 WIASRD data elements for incumbent workers.	ETA will generally approve this waiver.
Local Performance Exemption for Entrepreneurship Training	Waiver of regulations at 20 CFR 666.300 to exclude entrepreneurship training from local performance measures.	Waiver not needed. See TEGL 26-09, Change 1 for further information.
OJT Credential Performance	Waiver of regulations at 20 CFR 666.100 to exempt state from including credential attainment outcomes for participants enrolled in OJT in the credential performance measure calculations. All participants served and outcomes should be reported in the WIASRD.	ETA will generally approve this waiver.
Performance Sanctions Applied to a Consortium	Waiver of WIA Section 136(h) and 20 CFR 666.420 to permit sanctions for poor performance to be applied to a consortium of multiple local areas, rather than to the individual local areas.	ETA will generally approve this waiver.
Performance Negotiations as a Consortium	Waiver of regulations at 20 CFR 666.300 and 666.310 to permit a consortium of multiple local areas to negotiate performance goals with the State as one entity.	ETA will generally approve this waiver.
Youth		
Youth Individual Training Accounts	Waiver of regulations at 20 CFR 664.510 of the prohibition on the use of ITAs for youth.	ETA will generally approve this waiver.

Waiver Name	Waiver Description	Policy Decisions, Program Year (PY) 2012
Competitive Procurement for Youth Program Elements	Waiver of WIA Section 123 of the requirement for competitive procurement of service providers for some or all youth program elements.	ETA will generally approve this waiver with the following parameters: ETA will allow American Job Center Operators or partner agencies to directly provide the following three elements: supportive services, follow-up, and work experience. ETA will <u>not</u> grant this waiver for other elements except in very limited circumstances.
Alternative School for Out-of-School Youth	Waiver of WIA Section 129(c)(4)(A) to allow certain alternative school enrollees to count toward the 30 percent Out-of-School Youth program expenditure requirement.	ETA will consider this waiver on a case-by-case basis.
Youth Program Elements	Waiver of WIA Section 129(c)(2) to allow local areas to choose which of the 10 Youth program elements to make available to Youth program participants.	ETA will <u>not</u> grant this waiver for any state.
Youth Follow-up Services	Waiver of regulations at 20 CFR 664.450(b) of the requirement that all youth participants receive follow-up services for a minimum duration of 12 months.	ETA will <u>not</u> grant this waiver for any state.
Youth Eligibility	Waiver of WIA Section 101(13) to grant eligibility to children of parents who are WIA Adult program participants.	ETA will <u>not</u> grant this waiver as it lies outside the waiver authority.
Work Readiness Indicator Only for Youth Co-enrolled in WIA Title I and TANF or CSBG for Summer Youth Employment Activities	Waiver of regulations at 20 CFR 664.460 to use the work readiness indicator as the only performance measure for youth co-enrolled in WIA and other programs for Summer Youth Employment activities.	ETA will consider this waiver on a case-by-case basis.

Waiver Name	Waiver Description	Policy Decisions, Program Year (PY)-2012
Waiver to Apply Program Design Flexibility for Youth Co-enrolled in WIA Title 1 and TANF or CSBG for Summer Youth Employment Activities	Waiver of WIA Section 129, 20 CFR 664.405(a), and 664.450(b) to apply the program design flexibility for youth co-enrolled in WIA and other programs for Summer Youth Employment activities, specifically to provide follow-up services and/or an assessment and Individual Service Strategy as deemed appropriate for such youth.	ETA will consider this waiver on a case-by-case basis.
Governance		
State Board Acting as Local Board	Waiver of regulations at 20 CFR 661.300(f) to allow the State Board to carry out the roles and responsibilities of the Local Board.	ETA will consider this waiver on a case-by-case basis.
State WIB Membership Requirements	Waiver of WIA Section 111(b) to streamline the membership of the State Workforce Board.	ETA will consider this waiver on a case-by-case basis.
Other		
Exemption from the requirement to conduct evaluations	Waiver of requirement at WIA Section 134(a)(2)(B)(ii) and 20 CFR 665.200(d) to conduct evaluations of workforce investment activities for adults, dislocated workers, and youth in order to establish and promote continuous improvement of the statewide workforce investment system.	ETA will consider this waiver on a case-by-case basis.
Exemption from the requirement to disseminate training provider performance and cost information	Waiver of the requirement at 20 CFR 665.200(b)(3) to disseminate training provider performance and cost information.	ETA will no longer approve this waiver. This waiver will remain in effect until June 30, 2013 for states that are currently granted approval.

Waiver Name	Waiver Description	Policy Decisions, Program Year (PY) 2012
Exemption of the requirement to provide additional funding to areas with a high concentration of WIA-eligible youth	Waiver of WIA Section 129(b)(2)(C) and 20 CFR 665.200(h) to exempt the state from the requirement to provide additional assistance to local areas that have a high concentration of eligible youth.	ETA will consider this waiver on a case-by-case basis.
Eligible Training Provider List (ETPL) Initial Eligibility	Waiver of regulations at 20 CFR 663.530 of the time limit on the period of initial eligibility for training providers.	ETA will generally approve this waiver.
ETPL for Providers Adding Programs	Waiver of the ETPL process for eligible providers adding programs.	ETA will <u>not</u> grant this waiver as it lies outside the waiver authority.
Public Service Employment	Waiver of WIA Section 195(10) and 20 CFR 667.264(a)(2) of the prohibition on the use of funds for public service employment.	ETA will consider this waiver on a case-by-case basis.
Contracting for Training Outside of ITA's	Waiver of WIA Section 134(d)(4)(G) to allow local areas to contract for training outside the ITA process.	The FY 2011 and FY 2012 Department of Labor Appropriations Acts allow local areas to contract with providers for class-size training in high-demand occupations, if it does not limit customer choice, and remains in effect under the FY 2013 Continuing Resolution. A waiver is not necessary for PY 2011, 2012, or 2013 WIA funds.
One-Stop Intake	Waiver of regulations at 20 CFR 662.240(b)(10) to allow WIA and W-P funded staff to perform intake for other programs.	ETA will consider this waiver on a case-by-case basis.
Work-Flex	Waiver at WIA Section 192 to provide state authority to waive certain elements of WIA for local areas, based on submitted plan.	ETA will consider work-flex requests on a case-by-case basis.

Waiver Name	Waiver Description	Policy Decisions, Program Year (PY) 2012
Business Capitalization	Waiver of WIA Section 181(e) to permit the use of a limited amount of WIA funds to capitalize a small business in concert with entrepreneurial or small business training.	ETA will <u>not</u> grant this waiver for any state for formula funds, but will consider this waiver for a National Emergency Grant for a disaster-related event on a case by case basis.
Needs Related Payments for Dislocated Workers	Waiver of regulations at 20 CFR 663.820 of the requirement that dislocated workers must be enrolled in training by the end of the thirteenth week after lay-off to receive needs-related payments.	ETA will <u>not</u> grant this waiver as it lies outside the waiver authority.
Sequence of Service	Waiver to streamline sequence of service.	Waiver not needed; refer to TEGL 14-08, Section 13.