

<b>EMPLOYMENT AND TRAINING ADMINISTRATION</b> <b>ADVISORY SYSTEM</b> <b>U.S. DEPARTMENT OF LABOR</b> <b>Washington, D.C. 20210</b>	CLASSIFICATION WIA/Waivers/Work-Flex
	CORRESPONDENCE SYMBOL OWI
	DATE September 15, 2005

**ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 5-05**

**TO:** ALL STATE WORKFORCE ADMINISTRATORS

**FROM:** EMILY STOVER DeROCCO  
Assistant Secretary 

**SUBJECT:** Waiver Flexibility for Hurricane Katrina Recovery

1. **Purpose.** The purpose of this Training and Employment Guidance Letter (TEGL) is to provide states with a list of provisions of the Workforce Investment Act (WIA) that have previously been waived or new provisions that have not been waived but are within the statutory waiver authority under the WIA regulations at 20 CFR 661.400. These waivers will provide states with increased flexibility to respond to job seekers and business needs in hurricane-affected areas and areas receiving an influx of evacuees. Included is an explanation of the flexibility provided by the workforce flexibility (work-flex) provisions of the regulations.
2. **Background.** The Workforce Investment Act (WIA) section 189(i) allows the Secretary of Labor to grant waivers of statutory and regulatory requirements, some of which may impede a state's ability to provide assistance to hurricane evacuees (20 CFR 661.400). Many states have taken advantage of the flexibility provided through the waiver of these provisions. In addition, the statute, at section 192, allows a state to submit a workforce flexibility (work-flex) plan, which allows the state to waive statutory or regulatory requirements under title I of WIA, applicable to local areas.
3. **Action Required.** States interested in applying for waivers or becoming a work-flex state should:
  - Review the attached list of WIA provisions that have previously been waived and new provisions that have not been waived but are within the statutory waiver authority.
  - Identify additional WIA provisions that are not listed but that the state would like to submit in a waiver plan.

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- Determine which of these provisions would be most beneficial to their state and develop a waiver plan which **briefly** describes requirements to be waived, actions to remove state or local barriers, the process for monitoring implementation, the public comment process, and the related outcomes expected from the waiver, as stipulated in 20 CFR 661.400 – 661.420. See attachment II for a template of such a letter.
  - Identify one or more statutory or regulatory requirements under title I of WIA applicable to local areas or the Wagner-Peyser Act that the state would like authority to waive and submit a work-flex plan as described in attachment I. Once the state is identified as a work-flex state, it has the authority to identify additional local level provisions to waive without further approval from the Secretary of Labor.
  - Submit the waiver/work-flex plan to: Assistant Secretary Emily Stover DeRocco, U.S. Department of Labor, 200 Constitution Avenue, N.W., S-2307, Washington, D.C. 20210. Please note that regular mail delivery in the DC area is inconsistent; therefore, we recommend using an overnight delivery service. You also may email this request attn: Christine D. Kulick, Federal Coordinator at [kulick.christine@dol.gov](mailto:kulick.christine@dol.gov). The review and approval of your request will be expedited.
4. **Inquiries.** Please direct questions to Sean Kelly, Waiver Specialist, U.S. Department of Labor at (202) 693-3994 or [kelly.sean@dol.gov](mailto:kelly.sean@dol.gov).
5. **Attachments.**
- I. Provisions of WIA that May be Waived & Work-flex Plan Options
  - II. Waiver/Work-flex Plan Template

## Attachment I

### Provisions of WIA That May be Waived and Work-flex Plan Options

#### Waivers:

States may want to consider using the language provided to request one or more of the following waivers:

1. Waiver of the funds transfer limitation at WIA section 133(b)(4) to permit the state to approve local area requests to transfer up to 100 percent of local area allocations between the WIA Adult and Dislocated Worker programs.
2. Waiver of the language that limits the authority to provide the activities identified in WIA section 134 to the state. This waiver permits local areas to request the use of up to 100 percent of local area formula allocation funds to provide statewide employment and training activities.
3. Waiver of the reallocation provisions at WIA sections 128(c)(2) and 133(c)(2), and 20 CFR 667.160, to permit the state to develop more flexible recapture and reallocation policies.
4. Waiver of the required 50 percent employer match for customized training at WIA section 101(8)(C). This allows local areas to offer a sliding scale match based on criteria developed by the state for businesses impacted by the hurricane and those training hurricane-impacted individuals.
5. Waiver of the employer reimbursement for on-the-job training at WIA section 101(31)(B) for hurricane-impacted businesses and businesses training hurricane-affected individuals.
6. Waiver of performance provisions in WIA Section 136(b) and (c) for those participants who were served in impacted state and local areas leading to the displacement of their WIA participants. Because the local areas on the Gulf Coast have lost their current WIA participants to other local areas, and in many cases, other states, ETA may consider exclusion from the performance measures of those participants who have been forced from their local area or state due to the hurricane, although this would not allow states to opt out of all reporting requirements.

7. Waiver of the limitation on use of funds for capitalization of businesses at WIA section 181(e) to permit WIA funds to be used to capitalize a small business up to \$5,000 in concert with entrepreneurial or microenterprise training.
8. Waiver of the requirement that local programs provide each of the ten youth program elements at WIA section 129(c)(2) as options available to youth participants. Such a waiver will allow affected local areas to focus on the youth services most needed.
9. Waiver of 20 CFR 664.510 under WIA section 129 to permit the use of Individual Training Accounts (ITAs) for youth.
10. Waiver of 20 CFR 664.450(b) under WIA section 129(c)(2)(I) that requires all youth participants to receive some form of follow-up services for a minimum duration of 12 months. In anticipation of the transitive nature of youth participants displaced by the hurricane, many youth may receive services in temporary locations and return back to their homes or move to new locations and such youth could be included for a waiver of the 12 month minimum.
11. Waiver of WIA Section 123 requirement that eligible providers of youth activities shall be identified on a competitive basis. In those areas impacted by Hurricane Katrina, waivers can be considered where service providers have diminished capacity or where there is a dearth of offerors.

**Workflex:**

States may also want to consider using the following language to request designation as a work-flex state:

We are requesting designation as a work-flex state. Under this designation, we would like to provide waivers of provider eligibility provisions applicable to local areas under WIA section 122. We seek the flexibility to enable local areas to provide training for individuals by instructors and providers they deem most qualified, given the immediate demand for training and the loss of training providers. The state will ensure that training providers are helping individuals with skills in-demand that lead to sustainable employment. As other local level barriers are identified during the recovery process, we hope to provide additional waivers for local areas under the work-flex authority.

**Attachment II**  
**Waiver/Work-flex Plan Template**

September \_\_, 2005

The Honorable Elaine L. Chao  
Secretary  
United States Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210-0002

Dear Secretary Chao:

As you know, my state was severely impacted by the huge influx of evacuees from the states directly impacted by Hurricane Katrina. We have an immediate need for increased flexibility to design and deliver workforce services that will allow us to respond effectively to the disaster and its effects. Accordingly, we are requesting the following Workforce Investment Act (WIA) waivers:

[identify the waivers from the attached list and/or additional provisions you would like to waive, or the local provisions you would like authority to waive under the work-flex option]

We are submitting these requests per the requirements for submission of a waiver plan under WIA section 189(i)(4) and 20 CFR 661.420, [and the requirements for submission of a work-flex plan under WIA section 192 and 20 CFR 661.430]. As required by 20 CFR 661.420(c)(2), we have determined that there are no state or local statutory barriers. The waiver plan [and work-flex plan] will allow the state to immediately address the workforce challenges facing the state. The precise programmatic and performance outcomes will be negotiated with the ETA Regional Office within the next three months. The state will monitor progress and ensure accountability for federal funds in connection with these waivers by reviewing monthly expenditure, performance and other reports submitted by local boards, through regularly scheduled calls or meetings with local board directors, through regular contact with the ETA Regional Office liaisons, and through its monitoring and performance accountability system. We have posted the waiver [and work-flex] plan[s] on our Web site for review and comment, and have consulted local boards and other stakeholders. We appreciate your consideration of these requests and seek an expedited response so that we may move forward in our efforts.

Sincerely,

Governor of State