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TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 16-05

TO: STATE WORKFORCE ADMINISTRATORS
STATE AND LOCAL WORKFORCE INVESTMENT BOARD CHAIRS
STATE WIA LIAISONS
STATE DISLOCATED WORKER PROGRAM COORDINATORS
STATE RAPID RESPONSE COORDINATORS
STATE TRADE ADJUSTMENT ACT COORDINATORS
STATE BUSINESS RELATIONS GROUP COORDINATORS
STATE PERSONAL REEMPLOYMENT ACCOUNT DEMONSTRATION
PROJECT OPERATORS

FROM: EMILY STOVER DeROCCO
Assistant Secretary 

SUBJECT: Flexibility Under Current Employment and Training Law for Hurricane
Recovery Strategies

- Purpose.** The purpose of this Training and Employment Guidance Letter (TEGL) is to highlight and review those areas of current law which offer flexibility in tailoring workforce strategies in the variety of situations experienced in areas impacted by the hurricanes of 2005 and locations where evacuees have moved.
- References.** Workforce Investment Act (WIA) of 1998, 29 U.S.C. 2801 *et seq* P.L. 105-220 (Aug. 7, 1998); Wagner-Peyser Act, as amended 29 U.S.C. 49 *et seq*; Workforce Investment Act regulations, 20 CFR Part 652, 661-670, (August 11, 2000); TEGL 5-05; TEGL 12-01; 20 CFR Part 641; WIA Section 167, 20; TEGL 25-04; 2000 Amendments to the Older Americans Act (OAA), P.L. 106-501; TEGL 37-04; and WIA Section 166.
- Background.** The Department of Labor (the Department) continues to encourage innovation in creating or adapting workforce solutions using the full range of flexibility already allowable under current law to address the employment and

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training needs of individuals affected by the hurricanes of 2005. A key underpinning of the WIA of 1998 is state and local flexibility to develop workforce solutions that fit the unique conditions of state and local labor markets. Specifically, Section 661.120 (a) and (b) of the WIA regulations expresses the longstanding principle that the Department encourages state and local innovation:

“States [local areas] should establish policies, interpretations, guidelines and definitions to implement provisions of Title I of WIA to the extent that such policies, interpretations, guidelines and definitions are not inconsistent with the Act and the regulations issued under the Act as well as Federal statutes and regulations governing One-Stop partner programs and state policies.”

This TEGL identifies specific points of statutory and regulatory flexibility which states and localities may want to utilize as they craft new workforce strategies in support of individuals impacted by the hurricanes of 2005 and overall hurricane recovery efforts. In order to remove as many service provision barriers as possible for hurricane-impacted workers and businesses, the Department encourages states to use the full extent of flexibility permitted under the statute and regulations. This may require states and local areas to revisit their own policies in order to achieve maximum flexibility.

It is important to acknowledge this flexibility is not new. It has long been embedded in the current law, and many states have successfully taken advantage of it to further a particular area of focus to meet state specific circumstances. The Department’s intent in highlighting these areas of flexibility in this TEGL is to prompt states to relax self-imposed restrictions, definitions, interpretations, etc., through continual policy reviews in order to be able to design new strategies directly responsive to needs arising from the hurricanes of 2005 or other ongoing circumstances.

The TEGL will:

- Highlight flexibility in the current law;
- Discuss examples of potential strategies for consideration as part of the hurricane response efforts, such as the possible expansion of little-used entrepreneurial, self-employment training as an effective tool for assisting low-income populations who are often most affected by catastrophic events;
- Suggest ways in which waivers may facilitate creative service delivery strategies and provide for flexibility in use of funding, such as using Governor’s 15% state activities funding for loan funds or to leverage capital from other agencies and organizations for business start-up; and

- Suggest how the above purposes can be pursued in the Employment & Training Administration's national programs for older workers, Indian and Native Americans and farm workers.

1. **Funding Flexibility Under WIA Adult, Dislocated Workers and Youth Programs and Wagner-Peyser.**

- a. **Governor's Statewide Activities 15% Funds.** The most flexible funds available to states are the funds reserved under WIA Section 128(a) for statewide activities. Up to 15 percent of funds available for adult, dislocated worker, and youth activities may be reserved by the Governor for statewide workforce investment activities and may be combined and used for any of the activities authorized in WIA Sections 129(b), 134(a)(2)(B) or 134(a)(3)(A) (which are described in 20 CFR 665.200 and 665.210) regardless of the originating funding streams. The Act and regulations identify required statewide activities and other optional activities. These lists are not all-inclusive. States have considerable flexibility to develop other activities using reserve funds as long as they are consistent with the purpose of WIA.

States that have not done so previously may want to consider requesting a waiver of the language at 134(b) that limits the local areas' authority to provide the statewide activities identified in WIA Section 134(a). States may request a waiver permitting local areas to use a portion of allocated local area formula funds to provide those activities identified as statewide employment and training activities under the statute. Historically, the Department has approved up to 25 percent of local area funds to be used for activities permissible by states using the Governor's 15% funds and will consider requests for higher amounts where such a need is demonstrated.

Please note that eligible adults, dislocated workers, and youth who are enrolled in program services funded by WIA statewide funds are included in the state's WIA Standardized Record Data (WIASRD), quarterly, and annual reports.

- b. **Governor's Reserve Funds for Statewide Rapid Response Activities.** WIA also allows Governors to reserve up to 25 percent of funds made available for dislocated worker services to finance rapid response activities. Support for local areas experiencing disasters is one of the primary purposes identified in the statute for the use of reserved statewide rapid response funds under WIA Section 134 (a)(2)(A)(ii). Rapid response includes "the provision of additional assistance to local areas that experience disasters or other events that precipitate substantial increases in the number of unemployed individuals, carried out in local areas by the state or by an entity designated by the state, working in conjunction with the local boards and the chief elected officials in the local areas." These funds may

also be used to serve youth who have been determined eligible to receive dislocated worker services.

Individuals served with rapid response funds are included in the state's WIASRD and in the dislocated worker performance calculations for the quarterly and annual reports.

- c. **Section 7(b) of the Wagner-Peyser Act.** Under Section 7(b) of the Wagner-Peyser Act, ten percent of the funds allotted to each state can be used by the Governor for any of three purposes: a) for performance incentives for One-Stop employment services activities; b) for services for groups with special needs; and c) for extraordinary costs associated with the implementation of exemplary models and projects for delivering employment services. Within these provisions of the Act, states have the latitude to use Wagner-Peyser Act funding for services targeted to workers affected by the hurricanes and to implement new service delivery models for disaster recovery. Such models might include the extra costs to cover the transportation to job search activities or rapid response-like interventions.

Please note the Act requires services for groups with special needs under Section 7(b)(2) be carried out pursuant to joint agreements with the state workforce agency responsible for Wagner-Peyser, the appropriate local workforce investment board, and chief elected official(s) as well as public and private, nonprofit organizations.

- d. **Incentive Funds.** Incentive funds received by states under WIA Title V - General Provisions, Sections 503(a) and 503(b) and described at 20 CFR 666.200 and 666.210 are also highly flexible. States may use funds to carry out innovative programs under WIA Titles I and II and the Carl D. Perkins Vocational and Technical Education Act, regardless of which Act is the source of the incentive funds. The Department acknowledges that states have already submitted a plan regarding the usage of these funds, and grant documents have been issued. If, in response to the hurricanes, a state wants to use their incentive funds in ways that differ from their approved plan and corresponding grant documents, the Department will work with the state to process any necessary modifications to both documents.
5. **Waivers.** Under WIA Section 189(i)(4), and 20 CFR 661.400, 661.410 and 661.420, the Secretary has authority to waive any of the statutory or regulatory requirements of WIA Title I, subtitles B (Statewide and Local Workforce Investment Systems) and E (Administration) as well as Sections 8 through 10 of the Wagner-Peyser Act (29 U.S.C. 49g through 49i), except for provisions relating to certain specified subjects (e.g., wage and labor standards) listed at 20 CFR 661.410. Many states have already

requested waivers and can continue to do so when the requirements of the law pose barriers to carrying out the necessary activities in response to the hurricanes of 2005. Additionally, states may want to consider requesting designation as a work-flex state. Work-flex authority, if approved, allows Governors to waive any of the statutory or regulatory requirements under Title I of WIA applicable to local areas, except those described at 20 CFR 661.430(a)(1), any of the statutory or regulatory requirements applicable under Sections 8 through 10 of the Wagner-Peyser Act, except for those listed at 20 CFR 661.430(a)(2), and any of the statutory or regulatory requirements under the Older Americans Act of 1965, except those described at 20 CFR 661.430(a)(3).

For the states' convenience, Attachment I includes both a compiled list of waivers that build on or are similar in nature to those the Department has approved in the past as well as ideas for new waivers that, depending on the specific request, may be possible under the Secretary's current waiver authority. States and localities are also encouraged to review TEGL No. 5-05 regarding waivers.

6. **Service Flexibility Under WIA Adult, Dislocated Worker and Youth Programs.**

- a. **Supportive Services Under WIA.** Supportive services are a part of the workforce service menu, as discussed in WIA Section 134(e)(2) and in 20 CFR 663.800 to 663.810. WIA funds may be used to provide supportive services to adults and dislocated workers who are participating in core, intensive, and training activities and are unable to obtain such supportive services through other programs providing such services. Note that these services may only be provided when they are necessary to enable participation in WIA Title I activities. The term "supportive services" is defined in WIA Section 101(46) but the definition is not an exclusive list of activities that may be funded as supportive services. Consistent with the regulations at 20 CFR 663.800, local areas are required to develop a policy on supportive services in consultation with their One-Stop Career Center partners and other community service providers that ensures resource and service coordination in the local area. Examples of supportive services local areas may choose to fund include child care, dependent care, relocation costs for evacuees to return home to a job, transportation, emergency housing, and medical assistance. Local areas are strongly encouraged to leverage supportive services from social support programs first and use WIA funds for supportive services only when necessary and prudent.
- b. **Needs Related Payments (NRPs) Under WIA.** Under WIA Section 134(e)(3) and 20 CFR 663.800 through 663.840, needs related payments are available to provide income support to enable individuals to participate in training; the terms under which NRPs may be paid are reflected in local area policies. When determining eligibility, as well as dollar levels of needs related payments, certain documents may be required from the adult or dislocated worker participant. Although most

documentation issues should have been addressed by now, given the unique circumstances surrounding the hurricanes, local areas may need to continually review their current policies regarding documentation requirements.

When faced with documentation and verification challenges, states and localities may consider identifying reasonable proxies in lieu of documents easily available under normal, non-disaster conditions. However, in such circumstances, it is the Department's expectation that the program participant will provide in a reasonable timeframe, as determined by the state and locality, any source documentation that has become available to support the determination of eligibility for needs related payments. 20 CFR 663.830, also provides flexibility to provide NRPs to individuals waiting to enter training. NRPs "may be provided if the participant has been accepted in training that will begin within 30 calendar days." Moreover, the Governor has authority to permit local areas to extend the 30-day requirement to address appropriate circumstances. Because many of the individuals impacted by the hurricanes were living at or below the poverty level prior to the hurricane events, their ability to enroll in training and at the same time finance the basic needs of their families may be limited. Acknowledging that there will be numerous financial and other resources available to individuals impacted by the hurricanes that should be used first, needs-related payments may help defray some of the financial burdens so that participants can choose training as a viable option to reemployment.

7. Service Flexibility Under WIA Adults and Dislocated Workers Only.

- a. **Dislocated Worker Eligibility.** The requirements governing dislocated worker eligibility are found in WIA Section 101(9) and 20 CFR 663.115. At 20 CFR 663.115(b)(2), the regulations provide governors and local boards the flexibility to establish policies and procedures for One-Stop Career Center operators to use in determining an individual's eligibility as a dislocated worker, particularly under special conditions such as a natural disaster, as long as the policies are consistent with the definition at WIA Section 101(9). States are reminded that these policies should also detail the requirements the states and localities have established for documenting and verifying eligibility and are encouraged to consult TEGL No. 12-01, Attachment C for guidance regarding documenting eligibility.

The requirement of a link to previous employment to be eligible for dislocated worker services under WIA remains. Hurricane-impacted applicants that must meet program eligibility criteria but cannot produce the usual and necessary documentation immediately could provide a signed attestation that they are eligible for such services. In those circumstances, it is the Department's expectation that program participants must provide in a reasonable timeframe, as determined by the state and locality, any source documentation to support the determination of program eligibility.

Individuals that states and localities determine ineligible for the WIA Dislocated Worker program can be served with WIA Adult funds. To increase the ability of local areas to meet the needs of hurricane-impacted individuals without previous employment, states may consider requesting a waiver of the funds transfer limitation at WIA Section 133(b)(4) to allow local areas to transfer up to 100 percent of local area allocations between the WIA Adult and Dislocated Worker programs.

Finally, the Dislocated Worker program has no residency requirement so states and localities have the flexibility to provide dislocated worker services to individuals deemed eligible regardless of their place of residence prior to the hurricane event.

- b. **Eligible Training Providers Under WIA.** The requirements governing eligible training providers can be found in WIA Section 122 and at 20 CFR 663.500 through 663.595. Governors of designated work-flex states may provide waivers of provider eligibility provisions applicable to local areas. Under work-flex, states must continue to have an Eligible Training Provider List (ETPL) system, but can operate with increased flexibility. Such flexibility allows local areas to provide immediate training for individuals by instructors and training providers they deem most qualified. Under work-flex, participants in temporary jobs can be trained immediately and at the worksite by skilled employees in the industry. States may want to consider requesting designation as a work-flex state per the requirements at WIA Section 192 and 20 CFR 661.430.
- c. **Exceptions to Using Individual Training Accounts (ITAs).** While most WIA funding for training is delivered using ITAs as the mechanism for providing training services, the law allows contracts to be used in lieu of ITAs in certain circumstances. WIA Section 134(d)(4)(G)(ii) and 20 CFR 663.430, list the circumstances as: 1) when the services provided are on-the-job training (OJT) or customized training; 2) when the local board determines that there are an insufficient number of eligible service providers to accomplish the purpose; or 3) when the local board determines that there are training programs of demonstrated effectiveness offered in the area by community-based organizations or another private organization to serve special participant populations that face multiple barriers to employment.
- d. **Customized and On-the-Job (OJT) Training.** In response to the needs of hurricane-impacted individuals, the Department encourages states and localities to utilize all training methodologies permissible under WIA. Both customized training and OJT allow for flexibility in the selection of training providers as stated above. For example, some businesses impacted by Hurricane Katrina seeking to rebuild may find their former employees have evacuated the area.

Lack of an available workforce will impede their ability to reopen. OJT may be an important tool to attract evacuees to return home to work. To attract a qualified workforce, businesses are likely to be receptive to sharing in the cost of training new workers using either a customized training or an OJT model. The requirements on OJT contracting in WIA Sections 101(8) and (31), 134(d)(4)(D) and 195(4) and 20 CFR 663.700 - 710 are brief and flexible. States may want to request a waiver of the limit on employer reimbursement for OJT at WIA Section 101(31)(B) to permit reimbursement in amounts greater than 50 percent. The Department approved a waiver to provide reimbursement of up to 75 percent of the wage rate of participants for businesses with 100 or fewer employees. States may also want to consider requesting a waiver of the required 50 percent employer match for customized training at WIA Section 101(8)(C). The Department has approved such a waiver for a number of states, allowing them to apply a sliding scale match based on such criteria as size of business, impact on employment, and ability to provide match.

- e. **Entrepreneurial Training.** Training leading to self-employment is supported in WIA Section 134(d)(4)(D)(vi) and 20 CFR 663.300 - 320. Rebuilding small businesses will be critical to the economic infrastructure of the hurricane-impacted areas and will also provide the means for many individuals to engage in self-sustaining work. Therefore, entrepreneurial training should be considered as an important workplace strategy in response to the devastation caused by the hurricanes. In developing strategies to promote self-employment, states and localities are encouraged to partner with the Small Business Administration (SBA). Information on SBA area offices and hurricane-relief activities are available on the SBA Web site at www.sba.gov.

States and localities should consider certain parameters when funding entrepreneurial training to ensure maximum results from the investment. Some examples of these parameters include: a) requiring an assessment be conducted on every participant interested in entrepreneurial training to determine if such training is a “good fit,” given the individual’s circumstances; b) documenting, based on current labor market information, the demand in the area for the type of business the individual is proposing; c) requiring a formal business plan be developed, which includes discussion about sources for start-up capital; and d) requiring the participant be connected to a business-related mentor while in training.

States that voluntarily established Self-Employment Assistance (SEA) programs for recipients of Unemployment Insurance (UI) benefits who are most likely to exhaust those benefits are encouraged to utilize this program. SEA allows for:

- (1) The delivery of training and technical assistance in self-employment; and

(2) The payment of bi-weekly SEA allowances in lieu of regular UI benefits that help the unemployed while they are establishing and growing their businesses. Those states without SEA programs are encouraged to use the program to assist the unemployed in the wake of the hurricanes. For more details on this program and other partnerships, states should refer to TEGL No. 16-04 at www.doleta.gov.

8. Service Flexibility Under WIA Youth Programs Only.

- a. **Eligibility.** An eligible youth is defined in WIA Section 101(13) and 20 CFR 664.200. Youth must be between 14 and 21 years of age, low income, and have one or more defined barriers, such as being homeless as defined by the McKinney Homeless Assistance Act. Youth who are members of families who lost their homes in the hurricane-affected areas may be considered homeless individuals in the areas in which they relocated. In addition, the areas in which they relocated may be considered their state and local area of residence. For guidance about documenting and verifying youth eligibility, states and localities are urged to review TEGL No. 12-01, Attachment C.
- b. **Registration.** 20 CFR 664.215 requires that all youth participants be registered. Registration is the process of collecting information to support a determination of eligibility. States serving youth from hurricane-impacted areas may need to review their current policies regarding documentation requirements, particularly if it is determined that some documentation may be difficult for the participant to provide or the system to verify immediately. When faced with such documentation and verification challenges, hurricane-impacted applicants can sign an attestation that they are eligible for such services. In those circumstances, program participants must provide, in a reasonable period of time as determined by the state and locality, any source documentation to support the determination of program eligibility.
- c. **Work Experience.** Work experience is designed to enable youth to gain exposure to the working world and its requirements. Work experience should help youth acquire the personal attributes, knowledge, and skills needed to obtain a job and to advance in employment. One activity for work experience is paid and unpaid community service. This allows local areas to train youth in many activities and simultaneously provide a valuable community service.
- d. **Concurrent Enrollment.** 20 CFR 664.500 allows eligible youth the flexibility to participate in the youth and adult/dislocated worker programs concurrently. This flexibility affords older out-of-school youth the opportunity to take advantage of temporary jobs funded under [National Emergency Grants](#) and other services under the youth provisions. State and local areas in the impacted

areas may co-enroll youth to maximize youth funds and services and provide needed employment.

- e. **Academic Support for Relocated Youth.** Youth who have been relocated to new school districts due to the hurricanes of 2005 may be in need of additional academic support to adjust to their new school. Under 20 CFR 664.410, local programs must make tutoring, study skills training, and instruction leading to secondary school completion available to youth participants. Relocated youth should receive the necessary academic support services as cited under 20 CFR 664.410(a) (1) and (2).

9. Service Flexibility Under the Community Service Employment Program (SCSEP).

ETA has authorized certain administrative measures to provide the flexibility needed to deliver services to SCSEP participants and other low income persons age 55 and over. Further, WIA Section 192 enables states, as part of their work-flex plans, to waive any of the statutory or regulatory requirements under the Older Americans Act (OAA) except for requirements relating to: 1) the basic purposes of OAA; 2) wage and labor standards; 3) eligibility of participants in the activities; and 4) standards for agreements.

a. **Eligibility Determination.**

(1) **New Applicants:**

Age and Income. SCSEP applicants who, due to the effects of the hurricanes, have lost the documents needed to establish eligibility (with respect to age and income) may be enrolled in the program based on a signed attestation that they meet the eligibility requirements. However, under such circumstances, SCSEP participants must provide, in a reasonable timeframe as determined by the SCSEP grantee, any source documentation to support the determination of program eligibility.

Residency. SCSEP applicants who have been evacuated to another state may apply for SCSEP services in the receiving state.

(2) **SCSEP Participants:**

Age and Income. SCSEP participants may self-attest to their current or previously determined SCSEP eligibility. The existence of an individual record in the SCSEP Performance and Results QPR (SPARQ) System will be accepted as evidence that the individual is enrolled and will serve as documentation of that person's age and income eligibility.

Residency. For Program Year 2005 only, national grantees that enroll participants in a new state who were served by the same grantee in another state (e.g., an AARP participant from Louisiana who is now enrolled in a Texas AARP project) can continue billing the costs for such participants to the original project.

(3) Income Eligibility:

Disregarded Income. Income from other employment and training programs and any other emergency assistance will not be included in the determination of income eligibility, including income from employment in National Emergency Grant temporary jobs and income from emergency assistance debit cards issued by the Federal Emergency Management Administration (FEMA).

Definition of Family. If a participant is staying with family members as a result of the hurricanes, grantees should not include the income of the host family when determining the income eligibility of that individual.

b. Community Service Assignments.

(1) Changing Host Agencies:

When a host agency can no longer serve participants due to damage or relocation of the community service work-site, grantees may reassign participants to an emergency relief agency (e.g., the Red Cross), or another non-profit community service agency. Additionally, private employers may be used to accomplish the work-based learning objectives of a community service assignment through the on-the-job experience (OJT) and 502(e) assignments.

(2) Disrupted Host Agency Record-keeping:

In circumstances where the hurricanes disrupted record-keeping resulting in the lack of formal time sheets or other traditional "time-worked" recording tools, grantees may verify the hours worked through written confirmation by the host agency and the attestation of the participant. This recording practice is only a temporary solution and should be confined to a limited number of months following the hurricane disaster.

(3) Recouping Lost Hours:

Grantee staff and participants are authorized to make up for lost hours due to the emergency caused by the hurricanes by working extra hours in

succeeding pay periods. For example, if a participant was unable to work for two days because of the hurricanes, she/he may work extra hours over the next pay period or any combination of successive time periods to make up for lost hours. This is not an advance pay situation; therefore, a participant may only be compensated for hours worked in a given pay period. No more than a total of 120 lost hours may be recouped through "extra" work in succeeding pay periods.

c. **Managing Enrollment to Assist Evacuees.**

Grantees should take reasonable steps to assist evacuees to enroll in or continue their participation in SCSEP, or to become reemployed. In assisting evacuees, grantees should be guided by the following funds management considerations:

(1) **Temporary Positions:**

Evacuees can be enrolled in temporary positions until such time as they are able to be transitioned to a permanent position or they are able to return to their communities. (See TEGE No. 37-04, Attachment I, Section 2(A)(15) Over-Enrollment).

(2) **Funds Management:**

For Program Year 2005 only, the Department will permit national grantees to exercise flexibility in the management of funds across states. When hurricane evacuees from one state relocate to another state and the affected national grantee has projects in both states, the national grantee can charge the costs of the participant evacuees against the project account in the evacuees' state of origin.

d. **Charges for Extraordinary Emergency Assistance.**

Consistent with CFR 641.545, grantees may provide or arrange for a wide variety of supportive services to assist participants adversely affected by the hurricanes. These services may include, but are not limited to, the reasonable costs of:

- (1) Medical and dental emergency services
- (2) Temporary shelter
- (3) Clothing (uniforms)
- (4) Counseling

Grantees must maintain accurate documentation of costs incurred.

10. **Service Flexibility Under the National Farmworker Jobs Program.**

TEGL No. 25-04 provided information to allow the National Farmworker Jobs Program (NFJP) grantees to comply with the portions of WIA Section 167 and the WIA regulations that pertain to participant eligibility requirements. The WIA statute and the regulations require each NFJP grantee to maintain an eligibility determination system that enables its staff to generate a record supporting their eligibility determinations and enrollment decisions. This requirement is intended to ensure that all persons enrolled are eligible for participation in the NFJP.

- a. **Eligibility Determination.** For purposes of eligibility, grantees in areas affected by natural disasters (such as the hurricanes of 2005) should have applicants sign an attestation that they are eligible for services. In those circumstances, participants must provide in a reasonable period of time as determined by the grantee, any source documentation to support the determination of program eligibility.

11. **Service Flexibility Under Section 166 Indian and Native American Grantees.**

- a. **Eligibility Determination.** For purposes of documenting eligibility at 20 CFR 668.800(b)(1) for impacted individuals, including evacuees, INA grantees should have individuals sign an attestation that they are eligible for services. In those circumstances, individuals must provide in a reasonable amount of time as determined by the grantee, any source documentation to support the determination of program eligibility.

12. **Economic Development And Employment Generating Activities.** The Department fully supports the connection of workforce development efforts to economic development and encourages states and local areas to strengthen the linkage while developing hurricane recovery strategies.

13. **Federal Oversight.** The Department is committed to providing the widest possible flexibility in the use of WIA resources to fund disaster activities, products, and support due to the unprecedented scope of the hurricane disasters of 2005. However, the Department retains its responsibility for monitoring and oversight of the use of WIA and other federal funds. ETA will work with the grantees to ensure that necessary and appropriate systems and safeguards are in place to protect public funds taking into account the unique needs of the early response.

14. **Action Required.** States should share the information contained in this TEGL widely throughout the workforce system as they are developing and sharing hurricane response strategies with system partners and stakeholders.
15. **Inquiries.** Questions regarding areas of WIA flexibility expressed in this TEGL should be addressed to the appropriate ETA Regional Administrator. For specific inquiries about waivers, please contact Mr. Sean Kelly, ETA National Office, at (202) 693-3994 or kelly.sean@dol.gov.
16. **Attachment.** Provisions of WIA That May Be Waived and Work-Flex Plan Options.

Attachment I

Provisions of WIA That May Be Waived and Work-Flex Plan Options

Waivers:

States may want to consider requesting one or more of the following waivers in response to the hurricanes of 2005. For a more detailed explanation of what approval of the waiver may accomplish for your state, please reference TEGL 5-05 at http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2151

1. Waiver of the funds transfer limitation at WIA Section 133(b)(4).
2. Waiver of the language that limits the authority to provide the activities identified in WIA Section 134 to the state.
3. Waiver of the reallocation provisions at WIA Sections 128(c)(2) and 133(c)(2), and 20 CFR 667.160, permitting more flexible state recapture and reallocation policies.
4. Waiver of the required 50 percent employer match for customized training at WIA Section 101(8)(C).
5. Waiver of the employer reimbursement for on-the-job training at WIA Section 101(31)(B). **If approved, this waiver is limited to six months.**
6. Waiver to exclude individuals affected by the hurricane from the calculation of State and local performance measures identified at WIA Sections 136(b) and (c) should they be unable to complete the planned WIA activities because they return to their home or move to a new location prior to program completion. **If approved, the State must still include these displaced participants in its annual WIASRD submissions, using a special notation of their status in the global exclusion field.**
7. Waiver requiring local programs to provide each of the ten youth program elements at WIA Section 129(c)(2) as options available to youth participants.
8. Waiver of 20 CFR 664.510 under WIA Section 129 to permit the use of Individual Training Accounts (ITAs) for youth.
9. Waiver of 20 CFR 664.450(b) under WIA Section 129(c)(2)(I) requiring that all youth participants receive some form of follow-up services for a minimum duration of 12 months.
10. Waiver of WIA Section 123 requirement that eligible providers of youth activities shall be identified on a competitive basis.

Workflex:

States may also want to consider requesting designation as a work-flex state.