

TEGL 07-96 Attachment B

Billing Code
DEPARTMENT OF LABOR
Employment and Training Administration
20 CFR Part 626
Work-Flex

AGENCY: Employment and Training Administration, DOL

ACTION: Request for Applications for Work-Flex
Designation

SUMMARY: Applications are invited from States under the Workforce Flexibility Partnership Demonstration Program (Work-Flex) which is authorized under the Department of Labor Appropriations Act of 1997 (Pub. L. 104-208). The Secretary may authorize Work-Flex waivers in not more than six States, of which at least three must have populations not in excess of 3,500,000, with preference given to those States designated as Ed-Flex Partnership States under Goals 2000: Educate America Act (Pub. L. 103-227). Work-Flex designation will be made pursuant to an application and plan submitted by the State for the provision of workforce employment and training activities which is approved by the Secretary.

DATES: The deadline for submittal of applications will be May 30, 1997, close of business. After that date, applications will be accepted only if: 1) fewer than 6 States apply; 2) fewer than 3 States with a population under 3,500,000 apply; or 3) fewer than 6 proposals received by that date are approved by the Secretary.

ADDRESSES: Applications must be submitted to the U.S. Department of Labor, Employment and Training Administration, Office of Job Training Programs, 200 Constitution Avenue, N.W., Room N4459, Attention: Work-Flex Application, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: James M. Aaron, Director, Office of Employment and Training Programs, 200 Constitution Avenue N.W., Washington, DC 20210, (202) 219-5580 (this is not a toll-free number).

SUPPLEMENTAL INFORMATION:

Background

The specific provision authorizing the Work-Flex program is as follows:

"...the Secretary of Labor shall establish a workforce flexibility (Work-Flex) partnership demonstration program under which the Secretary shall authorize not more than six States, of which at least three States shall each have populations not in excess of 3,500,000, with a preference given to those States that have been designated Ed-Flex Partnership States under section 311(e) of Public Law 103-227, to waive any statutory or regulatory requirement applicable to service delivery areas or substate areas within the State under titles I-III of the Job Training Partnership Act (except for requirements relating to wage and labor standards, grievance procedures and judicial review, non-discrimination, allotment of funds, and eligibility), and any of the statutory or regulatory requirements of sections 8-10 of the Wagner-Peyser Act (except for requirements relating to the provision of services to unemployment insurance claimants and veterans, and to universal access to basic labor exchange services without cost to job seekers), and for a duration not to exceed the waiver period authorized under section 311(e) of Public Law 103-227, pursuant to a plan submitted by such States and approved by the Secretary for the provision of workforce employment and training activities in the States, which includes a description of the process by which service delivery areas and substate areas may apply for and have waivers approved by the State, the requirements of the Wagner-Peyser Act to be waived, the outcomes to be achieved and other measures to be taken to ensure appropriate accountability for federal funds."

The Work-Flex program is a demonstration program under which the Secretary may grant six States the authority to waive certain statutory or regulatory requirements applicable to service delivery areas or substate areas within the State under titles I-III of the Job Training Partnership Act (JTPA) or sections 8-10 of the Wagner-Peyser Act (W-P Act). The legislation also contains certain provisions that may not be waived under the JTPA and the W-P Act. The types of these non-waivable provisions and the specific provisions are discussed below.

The granting of authority to issue waivers is intended to provide flexibility to States to enhance the development of a comprehensive workforce development system and to improve the quality and quantity of outcomes for persons served. The legislation provides that at least three of the six States shall have a population not in excess of 3,500,000 and that preference be given to States designated under Ed-Flex. The State proposal for workforce development system improvement must provide a description of the process by which service delivery areas and substate areas may apply for and have waivers approved: examples of the requirements of JTPA and the requirements of the W-P Act to be waived; the outcomes to be achieved; and the measures to be taken to ensure appropriate accountability for Federal funds.

The Department is very interested in working with States within the statutory authority to make improvements in the workforce delivery system. To this end, the Department wants the States to know it will actively consider applications which will assist the State and its local service delivery structure in implementing workforce delivery system improvements. The Department of Labor's guiding principles for reform of the job training systems include:

- < **Individual Opportunity and Customer Choice.** Empowering participants who need employment and training services with the resources and information needed to make good choices.
- < **Leaner Government.** Replacing separate programs with streamlined systems for youth and adults, organized around the principles espoused by the School-to-Work and One-Stop concepts.
- < **Greater Accountability.** Ensuring a clear focus on results, not process, through mutually agreed upon improved performance outcomes.
- < **State and Local Flexibility.** Providing States, local communities and training systems with the freedom to tailor programs to meet real, locally determined needs.

< Strong Private Sector Roles. Ensuring that business, labor and community organizations are full partners in systems design and quality assurance.

Finally, the Department wishes to remind the States of the importance of maintaining programs for the disadvantaged and dislocated workers, maintaining adequate and comparable reporting and, within the School-to-Work framework, providing work opportunities, especially during the summer months, to disadvantaged youth.

APPLICATION REQUIREMENTS AND CRITERIA:

1. Who may apply and when may applications be submitted? Any State may apply for designation as a Work-Flex State. As required under the legislation and as discussed below, preference will be given to States designated by the Secretary of Education as Ed-Flex States. Initially, applications will be received until May 30, 1997. Since the Secretary may delegate waiver authority to only six States, applications will be accepted after that date only if: 1) fewer than six States apply; or 2) fewer than three States apply with a population under 3,500,000 or 3) fewer than six applications received by May 30 are approved by the Secretary. Please note that not more than a total of six States will be designated under WorkFlex. If six applications are approved in FY 1997, no additional designations will be made. If six States are not designated in FY 1997, and proposed language in the 1998 budget is approved, additional States up to a total of six may be designated.

Single SDA States with one State-wide SDA/SSA may apply for Work-Flex designation. In such States, the application must specify the entity which may request such waivers (typically the SJTCC or portion thereof which serves as the Private Industry Council). The Department recommends that States which have a single SDA identify a different body with responsibility for making decisions on requested waivers.

2. What information should be included in a State's Work-Flex proposal? To be considered for designation as a Work-Flex State, the Governor must submit an

application to the Secretary. This application must include the following:

a. Plan. A plan for the provision of workforce employment and training activities for the State. This may be a summary of the State plan for employment and training activities, but should be in sufficient detail to describe how the State envisions using the Work-Flex authority to enhance the development of a comprehensive employment and training system.

b. JTPA Requirements. A description of the process by which service delivery areas and substate areas may apply for and have waivers approved; and

c. W-P Act Requirements. A description of the specific requirements in Sections 8, 9 and 10 of the W-P Act and applicable regulations to be waived.

d. Specific Elements to be Addressed. To be responsive to the above, the application must contain a specific description of the process and requirements for JTPA and W-P Act waivers (as appropriate), including:

(1) identification of the State official designated by the Governor who would have authority to grant requested waivers, including documentation that the Governor has granted the official such authority;

(2) requirements for application for a waiver by service delivery areas and substate areas;

(3) identification of the JTPA requirement(s) for which the waivers(s) will likely be requested (either specific, if known, or examples);

(4) description of the criteria for approval of waivers, including a description of the process for assuring that waivers proposed for approval are not prohibited by the provisions of legislation (including requirements of legislation other than JTPA), or provisions under which the Work-Flex authority is granted ;

(5) process for providing an opportunity for public review and comment;

(6) requirement(s) for identification of improvement in outcomes to be expected as the result of granting a waiver, including how the baseline will be established and what data sources will be used;

(7) measures to be taken to ensure the appropriate accountability for federal funds and reporting;

(8) procedures that the State will use to monitor and evaluate the implementation of waivers by local areas, including the outcomes to be achieved;

(9) a statement of State legislative, regulatory or other impediments to administration of the waiver authority sought and planned State action to resolve such matters; and

(10) assurance that the State has the capacity to administer the waiver system.

As provided in the legislation, certain provisions are not subject to waiver under Work-Flex. For the JTPA, these include requirements relating to wage and labor standards, grievance procedures, judicial review, nondiscrimination, allotment of funds and eligibility. Also, waiver authority must be requested by and granted to service delivery areas or substate areas. State responsibilities or programs operated under statewide authority are not subject to waiver under this program. For example, this includes designation of service delivery areas or substate areas, the State planning process, the State Education and Coordination grants under section 123, the Services to Older Individuals under section 204(d), the Title III funds reserved for State activities (Governors' Reserve) under section 302(c) and grants awarded to States with Title III National Reserve Account (NRA) funds.

Note: Some provisions (such as certain State responsibilities) not subject to waiver under the Work-Flex authority may be eligible for waiver under the other new statutory or regulatory waiver authority included in the Appropriations Act. For example, a State may apply for waivers for State-based programs. Such general waiver requests may be submitted as part of the Work-Flex proposal or may be submitted separately. General waiver

requests will be reviewed in the context of the requested Work-Flex authority, but will be subject to the one-year limit applicable to such general waivers.

For the W-P Act, only the requirements of sections 8-10, which relate to the development, review and approval of State plans, recordkeeping and reporting may be waived. The law also specifically excludes from waivers any requirements relating to provision of services to unemployment insurance claimants and veterans and to universal access to basic labor exchange services without cost to job seekers.

e. Public Consultation and Comment Process. The Department expects the State to involve the local elected officials, the private industry councils, and community-based organizations and other stakeholders in the process when developing the Work-Flex application. Consistent with the general waiver request, the State must provide interested parties an opportunity to review and comment on the proposed application. At a minimum, the following groups must be afforded the opportunity to review and comment on the proposed application: (1) The State Job Training Coordinating Council; (2) each house of the State legislature; (3) local elected officials and Private Industry Councils; (4) appropriate local education and other public and non-profit agencies in the service delivery areas; and (5) labor organizations in the area which represent employees having the skills in which training is proposed and public sector unions, where they may be affected. Also, the proposed application must be made reasonably available to the general public through such means as public hearings and local news facilities.

The Work-Flex authority is intended to provide States with the ability to enhance the development of a comprehensive workforce development system, including implementation of the One-Stop Career Center system and the School-to-Work system. Another area of importance is the area of improving both the quality and quantity of outcomes of individuals served. Both of these will be of substantial importance in reviewing of proposals requesting the granting of the Secretary's authority for issuing waivers under Work-Flex.

CRITERIA FOR EVALUATION OF WORK-FLEX APPLICATIONS

Criteria for evaluation of Work-Flex proposals include:

1. Plan and Outcomes. The extent to which the authority sought will result in:

- a. improving the outcomes to persons served, and
- b. enhancing implementation of a comprehensive workforce development system in one or more areas.

The extent to which the authority sought will enhance the implementation of the One-Stop Career Center system and/or the School-to-Work system will be major factors in the evaluation of proposals.

2. Responsiveness. The extent to which the application meets the requirements of the legislation and this Notice for submission of an application. This includes the quality of the process for reviewing and approving local applications for waivers and for documenting and monitoring the results of waivers.

3. Accountability of Funds. Measures to be taken to ensure the accountability of federal funds, including monitoring, evaluation and reports.

4. Preference for Ed-Flex States - Tie-Breaking Procedures. Proposals will be evaluated based on the quality and specificity of the proposal. In the event that proposals submitted are judged to be substantially equal, preference will be given to States designated as Ed-Flex States on or before May 30, 1997.

5. Public Comments. All comments received on the application should be forwarded with the application to the Department of Labor together with the State's disposition of such comments.

CONDITIONS

1. Federal Review of Work-Flex Waivers Granted. In applying for waivers, States must recognize that the

impact of the use of Work-Flex authority to achieve goals and outcomes specified in the State proposal will be reviewed annually against stated goals. The Department reserves the right to withdraw the authority to issue waivers if: goals specified are not met for two consecutive years; or the State grants waivers for non-waivable provisions or for provisions of other legislation not subject to waiver.

2. Duration and Coverage. Work-Flex authority may be granted for up to five years. States granted such authority may approve waivers requested from all service delivery areas or substate areas or from selected areas.

3. Notification of the Granting of Waivers. States will be required to submit reports on a semi-annual basis concerning the administration of the waiver authority and on the accomplishments under this authority. After one year, annual reporting will be required. States shall notify the appropriate ETA Regional Administrator of the granting of a waiver(s) semi-annually. This notification shall include the area for which the waiver is granted, the provision of legislation and/or regulation waived and the duration of the waiver.

4. Federal Assistance. States are encouraged to regularly consult with the ETA Regional Office regarding any matters in which the discussion and assistance in the Work-Flex administration would be useful. Because Work-Flex is an important demonstration program with implications for future job training and employment service delivery, it is important that Work-Flex be tested to ensure that appropriate accountability can be maintained. ETA Regional staff will be responsible for providing information on Work-Flex administration and implementation. States granted Work-Flex authority are strongly urged to work closely -- on an ongoing basis -- with Regional Office staff so that both the federal and State partners are fully informed on the status and issues under Work-Flex. States may be asked to participate with ETA staff in designing and conducting the planned evaluation of the effectiveness of Work-Flex.

RAYMOND J. UHALDE

Acting Assistant Secretary of Labor