Texas Workforce Commission

Member of the Texas Workforce Network

Diane D. Rath, Chair
Commissioner Representing the Public

T. P. O'Mahoney
Commissioner Representing Labor

Ron Lehman
Commissioner Representing Employers

Cassie Carlson Reed
Executive Director

August 29, 2002

Mr. Joseph C. Juarez
Regional Administrator, Region IV
U.S. Department of Labor
Employment and Training Administration
A. Maceo Smith Federal Building
525 Griffin St., Room 317
Dallas, Texas 75202

Dear Mr. Juarez:

On behalf of the Texas Workforce Commission, the state operational entity for the Workforce Investment Act (WIA), I am respectfully requesting approval of the enclosed proposed WIA Waiver Plan (Plan) for the State of Texas. The Plan, which consists of five waiver requests, was developed in accordance with WIA, Section 189(i)(4); 20 CFR 661.400 – 661.420, and the Training and Employment Guidance Letter referencing the development and submission guidelines for waiver requests.

The Plan contains requests for waivers of the following provisions:

- the 50% cost of training match for customized training,
- eligible training provider reporting requirements,
- limitations on transfer of funds between the adult and dislocated worker programs,
- limitations on the use of the eligible training provider system for older and out-of-school youth; and
- the cap on funds reserved for statewide activities.

As required we have also included a description of the process by which notice and opportunity to comment on the Plan was provided to the Local Workforce Development Boards (Boards) and other interested parties. Also enclosed are copies of all thirty-nine comments received on the proposed Plan. The comments received on the Plan include comments on proposed Waiver Requests, which were originally numbered 1 through 6. We have since omitted Waiver Request No. 3, regarding the reallocation process. Therefore, for the sake of clarity, please note that commenters are generally referring to the following numbered waivers:

- **Waiver No. 1**: Customized Training: 50% of Cost of Training Employer Match;
- **Waiver No. 2:** Eligible Training Provider (ETP) Performance Reporting Requirements for Subsequent Eligibility Determination;
- **Waiver No. 3:** Omitted;
- **Waiver No. 4:** Transfer of WIA Funds between Adult and Dislocated Worker Programs;

- **Waiver No. 5:** Use of the Eligible Training Provider System for Older and Out-of-School Youth; and
- **Waiver No. 6:** 15 Percent Limit on Statewide Activities.

We appreciate the opportunity to submit this Plan, and we look forward to receiving the Secretary's approval of our Plan. We believe the Plan will provide increased flexibility to the State of Texas and Boards in implementing reforms to our State's workforce system. The waivers are necessary for the State and Boards to continue to meet the demands of area employers for skilled workers, and the workforce needs of area residents seeking employment. We anticipate the added flexibility will decrease the administrative processes at both the state and local levels, thus enabling more funds to be used for direct services. We believe this change will yield strengthened accountability in ensuring funds are targeted to local needs and used more efficiently and effectively.

If you have any questions or require additional information, please contact Luis Macias at (512) 936-0697 or by e-mail at luis.macias@twc.state.tx.us.

Sincerely,

Cassie Carlson Reed

Cassie Carlson Reed
Executive Director

Enclosure

mc: Diane Rath, Chair and Commissioner Representing the Public
T.P. O'Mahoney, Commissioner Representing Labor
Ron Lehman, Commissioner Representing Employers
Luis Macias, Director of Workforce Development Division

PROPOSED
WORKFORCE INVESTMENT ACT
WAIVER PLAN

FOR
TITLE I OF THE WORKFORCE INVESTMENT ACT OF 1998
AND
THE WAGNER-PEYSER ACT

AS AUTHORIZED BY
WIA, Section 189(i)(4) and
20 CFR 661.400 – 661.420

STATE OF TEXAS

August 29, 2002

STATE OF TEXAS
WAIVER REQUEST
WORKFORCE INVESTMENT ACT

Customized Training:
50% of Cost of Training Employer Match

The Texas Workforce Commission (Commission), the state operational entity for the Workforce Investment Act (WIA) is requesting a waiver to change the required 50% employer match to a match based on a sliding scale. Through this approach, the employer match would range from 10 to 50 percent based on certain desirable quality characteristics of the training and the transferability of the skills to be attained by the worker. The Texas Workforce Commission will seek input from employers and Local Workforce Development Boards (Boards) on the proposed Employer Match Sliding Scale.

This waiver request follows the format identified in WIA §189(i)(4)(B) (29 USCA §2939(i)(4)(B)) and WIA Regulations at 20 CFR §661.420(c).

1. **Statutory Provisions to be Waived:**
   WIA §101(8) (29 USCA §2801(8)) defines customized training and requires employers to pay not less than 50% of the cost of the training.

   In 1995, with the passage of House Bill 1863, the Commission was created to administer a variety of employment and training programs to help adults and youth develop the job skills necessary to meet the occupational needs of employers and the state. That legislation envisioned a statewide workforce investment system made up of the Commission, the 28 Local Workforce Development Boards and their service providers, known as the Texas Workforce Network. As a result of the Commission's leadership, Texas implemented WIA in 1999, a full year ahead of the federal mandate. One year later, all 28 Boards were operational and the Texas Workforce Network was delivering services statewide. The Commission oversees the Boards' service delivery that is based on the establishment of local control over large-block granted programs. The Texas Workforce Network has three underlying principals:
   - employer focused to meet the workforce needs of businesses and industries;
   - locally designed service delivery plans to serve current workers and individuals entering the labor force for the first time; and
   - integrated service delivery to allow the broadest range of job seekers to access employment assistance.

   Customized training optimizes the resources available under workforce development initiatives to meet the needs of employers and job seekers. Since 1996, the Commission has successfully administered employer driven customized training programs funded through state resources. Customized training focuses on employers' and job seekers' needs while minimizing programmatic and bureaucratic barriers.

The Commission oversees three customized training programs: Skills Development Fund; Self-Sufficiency Fund; and Achieving Performance Excellence (APEX) Grants. These programs provide job seekers with the necessary skills to meet the demands of business and industry for skilled employees. The Commission directly administers the Skills Development Fund and Self-Sufficiency Fund programs by developing partnerships with employers, public community and technical colleges, community-based organizations, and others. These statewide programs focus on creating new jobs for job seekers and on retraining existing employees according to the employers' needs.

The APEX Grant program is funded with WIA funds that the Commission awards to Boards on a competitive basis. Boards with APEX grants administer their APEX grant locally. Following the approach the Commission uses for administering the Skills Development Fund, Boards pull together employers and training programs to enhance the skills of workers based on the occupational needs of businesses and industries.

The Commission has extensive experience in working with employers and in designing workforce development programs that meet specific employer needs. However, the current 50 percent employer match requirement limits the ability to market customized training programs to local employers. Local employers too often conclude that the 50 percent match requirement creates costs that outweigh the benefits of participating in a WIA customized training program.

The proposed sliding scale for the employer match will create the necessary flexibility for employers to provide the required match at a rate that more appropriately represents a particular business' or industry's cost benefit ratio of contributing to a match amount to receive skilled employees. Allowing businesses and industries to apply the sliding scale to determine the match amount will increase employer participation in WIA customized training programs at the local level. The sliding scale will answer employers' primary reason for not participating in the customized training. Boards will increase their participation rates for skilled job seekers that received training and found employment. Employers will benefit by having a labor pool with the marketable skills they require.

Proposed Employer Match Sliding Scale:
The proposed employer match sliding scale will range from 10 to 50 percent, based on quality characteristics of the customized training. Quality characteristics will be based on goals of the State Strategic Plan for Workforce Development that adhere to the principles of training workers in high demand, high skill, high wage occupations and industries. The Commission will develop the sliding scale and the process by which it will be applied. The Commission is committed to ensuring that participants in customized training programs will acquire the skills to meet workplace requirements for long term employment and work toward sustaining employment in high-skill, high wage occupational areas.

2. **State or Local Statutory or Regulatory Barriers:**
There are no state or local statutory or regulatory barriers to implementing the requested waiver. Commission regulations and policy statements are in compliance with current

federal law. Upon notification of the approval of this waiver request, Commission regulation and policy will be amended to comply with the terms of the waiver.

3. **Goals to be Achieved by this Waiver:**
   - Increase flexibility at the local level to serve business and industry through a value added approach to their specific needs;
   - Equip workers with relevant job training with transferable skills that lead to high-skill, high-wage occupations and industries;
   - Improve ability of Boards to work with the private sector and respond quickly to changes in their areas; and
   - Increase local flexibility for design and control of training programs.

   Programmatic Outcomes:
   - Increase the percentage of employers using customized training as a means to hire and retain skilled workers.
   - Increase the percentage of workers trained and hired through customized training programs.

   Although existing data on Board customized training programs is not extensive at this time, it will be used as baseline data to measure progress on outcomes post waiver approval and implementation.

4. **Individuals Impacted by this Waiver:**
   Employers will benefit from the waiver due to the reduced match requirement. This will make customized training a more attractive option for acquiring workers trained to their specifications.

   The waiver will impact the provision of training services through customized training to Adults, Older Youth and Dislocated Workers eligible for services under WIA. In particular, WIA eligible individuals with multiple barriers to employment, low basic skills, and English language proficiency stand to benefit the most from customized training.

   Trade/NAFTA has impacted workers along the Texas-Mexico Border. Of special concern are the workers formerly in the garment industry and other labor-intensive industries with multiple barriers to employment, in particular, non-English speaking skills. Customized training addresses the specialized needs of job seekers, providing them with the skills necessary to meet employer expectations and the needs of business and industry.

5. **Process To Monitor Progress in Implementing the Waiver:**
   The Commission, with input from Boards, employers, and service providers, develops customized training programs. The Commission has a successful monitoring and performance accountability system that measures results for job seekers and employers using the Texas Workforce Network. Technical assistance during the implementation phase of the waiver will cover areas such as procurement, contracting and program design. The Commission continuously analyzes performance reports and compares actual performance with contract benchmarks. The Commission will continue to make adjustments to

monitoring performance requirements to ensure that performance goals and objectives are met for all WIA customized training programs. The Commission will monitor progress on this waiver by reviewing monthly expenditure and performance reports submitted by Boards and from regularly scheduled conference calls with Board executive directors. Provisions in the contracts for customized training programs address specific performance measures.

Notice to Boards. Notice to Boards would occur via issuance of Workforce Development Letter(s) (WD Letter), as well as through provision of training and/or technical assistance. These steps would be taken prior to the effective date of the waiver implementation.

STATE OF TEXAS
WAIVER REQUEST
WORKFORCE INVESTMENT ACT

Eligible Training Provider (ETP) Performance Reporting Requirements for Subsequent Eligibility Determination

The Texas Workforce Commission, the state operational entity for the Workforce Investment Act, is requesting waiver of the employment and wage performance reporting requirements for the Participant Universe – ALL for programs that are currently approved by the Texas Higher Education Coordinating Board (THECB). As provided for in WIA §122 (b)(1), these programs are exempted from submitting performance data at time of initial eligibility application. The waiver would apply to submission of specified performance data at time of subsequent eligibility application, as required by WIA §122 (d)(1)(A)(i) (29 USCA §2842(d)(1)(A)(i)), and 20 CFR §§663.535 and 663.540.

This waiver request follows the format identified in WIA §189 (i)(4)(B) (29 USCA §2939(i)(4)(B) and at 20 CFR §661.420(c).

1. **Statutory Regulations to be Waived:**
   WIA §122 (d)(1)(A)(i) (29 USCA §2842(d)(1)(A)(i) outlines the subsequent eligibility performance reporting requirements for the Participant Universe – ALL. The Commission is requesting a waiver of the employment and wage performance reporting requirements for programs that are THECB-approved at the time of subsequent eligibility application submission. The primary goals to be accomplished by this request include: (1) eliminating duplication of performance reporting and evaluation processes and (2) ensuring availability of a variety of quality WIA-certified programs from which eligible participants can select training option(s).

   In 1995, with the passage of House Bill 1863, the Commission was created to administer a variety of employment and training programs to help adults and youth develop the job skills necessary to meet the occupational needs of employers and the state. That legislation envisioned a statewide workforce investment system made up of the Commission, the 28 Local Workforce Development Boards and their service providers, known as the Texas Workforce Network. As a result of the Commission's leadership, Texas implemented WIA in 1999, a full year ahead of the federal mandate. One year later, all 28 Boards were operational and the Texas Workforce Network was delivering services statewide. The Commission oversees the Boards' service delivery that is based on the establishment of local control over large-block granted programs. The Texas Workforce Network has three underlying principals:
   - employer focused to meet the workforce needs of businesses and industries;
   - locally designed service delivery plans to serve current workers and individuals entering the labor force for the first time; and
   - integrated service delivery to allow the broadest range of job seekers to access employment assistance.

THECB-approved programs are subject to the THECB Institutional Effectiveness (IE) review process, and as such, have been reviewed and approved by the agency that oversees the program approval, revision and review process for publicly supported community and technical colleges. The IE review process is a comprehensive approach for verifying the effectiveness of Texas' community and technical colleges in achieving their local and statutory missions. It provides for the systematic use of evaluation results to continuously improve institutional performance and programs.

THECB Institutional Effectiveness Review Process

- Purpose, Authority, and Expectations: Provisions of Texas Education Code, §61.051 and U.S. Public Law 105-332 (Carl V. Perkins Vocational and Technical Education Act of 1998), charge the THECB with the responsibility of evaluating the effectiveness of workforce education programs, academic courses that are included in workforce education program curricula, and student services offered by public community and technical colleges, the Texas State Technical Colleges, and universities that offer applied associate degree programs for the purpose of assuring:
  - Continuous improvement of Texas' community and technical colleges in response to state and federal goals and higher education mandates, including workforce education and training;
  - Accountability to the citizens of the state, Texas Legislature, Governor, and to the U.S. Department of Education for expenditures of public funds; and
  - Responsiveness of Texas' public community and technical college programs and services in developing a well-educated citizenry and highly training workforce.

  Performance expectations for public community and technical colleges, the Texas State Technical Colleges, and universities that offer applied associate degree programs are stipulated in:
  - Texas Education Code, Sections 130.0035 and 135.01;
  - *Criteria for Accreditation Southern Association of Colleges and Schools (SACS);*
  - *Guidelines for Instructional Programs in Workforce Education;* and
  - *Texas Academic Skills Program Policy Manual.*

- Evaluation Process: Two methods of evaluating colleges have been approved by THECB. Each year, the president of each college is asked to select:
  - An on-site evaluation conducted by peer reviewers from public community and technical colleges from across the state and led by a THECB staff member,
    OR
  - An information and data review (informally referred to as a "desk review") conducted by THECB staff members. The desk review examines certain elements of the college's activities that have been identified as indicative of program and services quality.

  All colleges are automatically scheduled for a desk review unless the president requests an on-site peer review.

- Evaluation Timeline: According to statute, each public two-year institution of higher education must be reviewed periodically. The number of public community and technical colleges in Texas dictates that each college is evaluated for institutional effectiveness once every four years.

- Information Sources that Support the IE Initiative:
  - The Annual Data Profile, the *Statewide Factbook*, and the College Profiles summarize and analyze data reported by Texas' public community and technical colleges relating to state-level goals and federal reporting requirements.
  - Information derived from the On-Site Review and Information and Data Review processes is used to support the IE initiative.
  - The Annual Institutional Self-Evaluation is a required component of the annual application for Federal Perkins Act funds. It requires community and technical colleges to provide data on statewide goals and program-level assessments.

- Review of Outcomes Data: One aspect of the review process involves collection and analysis of outcomes based measures. The 'Achievement' measures include:

Measure	Standard
Completion Rates for Full-time Students not Receiving Remediation	30% of full-time first-time-in-college students not receiving remediation receive a degree or certificate or transfer within 3 years
Completion Rates for Full-time Students Receiving Remediation	30% of full-time first-time-in-college students receiving remediation receive a degree or certificate or transfer within 4 years
Completion Rates for Part-time Students not Receiving Remediation	15% of part-time first-time-in-college students not receiving remediation receive a degree or certificate or transfer within 5 years
Completion Rates for Part-time Students Receiving Remediation	15% of part-time first-time-in-college students receiving remediation receive a degree or certificate or transfer within 7 years
Retention Rates from Fall to Spring of Full-time First-time-in-College Students (taking >= 12 Semester Credit Hours)	Retention from Fall to Spring of students who did and did not receive remediation is not more than five percentage points below the state average
Retention Rates from Fall to Spring of Part-time First-time-in-College Students (taking 6-11 Semester Credit Hours)	Retention from Fall to Spring of part-time students who did and did not receive remediation is not more than five percentage points below the state average
Course Completion	Percentage of contact hours completed is not more than five percentage points below the

	state average
15 Graduates Over 3 Year Period	90% of all active workforce education programs produce 15 graduates over 3 years (except new programs which received THECB approval or were first offered within last 3 years) [NOTE: In future, documentation on students who do not graduate but who gain skills that lead to employment or advancement in positions related to their training can have a positive impact on the program status rating for those programs that do not meet this standard. When a statewide system is developed with the participation of business and industry to formally and consistently recognize such "marketable skills achievement", these positive program outcomes will be incorporated into the compliance requirements for this standard.]
85% Placement of Workforce Education Program Graduates within One Year of Graduation	100% compliance for all workforce education programs producing graduates (3 year average), except new programs
Technical Non-Completers/Non-Returners Employed or Pursuing Additional Education (does not include students who graduated)	Percent of non-completers/non-returners who are employed or pursuing additional education is not more than five percentage points below the state average
Licensure Pass Rate	90% of students tested on a specific licensure exam pass (Perkins Standard), ***OR*** the percentage of students who take licensure exams and pass is not more than 5% below the state average for the last 3 years for the specific licensure exam

As part of the IE review process, additional inquiry into the quality of one or more programs may be triggered if standards are not met for two of the following three measures:

- 15 Graduates Over 3 Year Period (overall);
- 85% Placement; and/or
- Licensure Pass Rate (where applicable).

In order for a new program to be approved, the institution must demonstrate overall institutional effectiveness. With any new program application, colleges must submit their institutional plan for meeting the '15 Graduates Over 3 Year Period' and '85% Placement' standards for any eligible programs that are not meeting these standards. The college must demonstrate successful student outcomes for each current workforce education program it offers. The referenced measures/standards must have been met for

each program over the previous three-year reporting period. These standards do not apply to institutional awards not listed on THECB's inventory of programs. The THECB grants exceptions to these standards for programs that have been implemented for less than three years or those currently in deactivation status. If a program is reactivated, the exception for new programs does not apply; the program is expected to meet all institutional effectiveness standards.

2. **State or Local Statutory or Regulatory Barriers:**
There are no state or local statutory or regulatory barriers to the implementation of the federal law or the implementation of the requested waiver. Commission regulations and policy statements are in compliance with current federal law. Upon notification of the approval of this waiver request, Commission regulation and policy will be amended to comply with the terms of the waiver.

3. **Goals to be Achieved by the Waiver:**
   - Eliminating duplication of performance reporting and evaluation processes by multiple state agencies, while maintaining the accountability of training providers as part of the subsequent eligibility determination process;
   - Streamlining the application submission and review process for THECB-approved programs which will have a direct impact on selected providers, Local Workforce Development Boards and Commission staff;
   - Enhancing and maintaining a robust Eligible Training Provider List (ETPL) in an effort to provide a variety of training options for eligible participants;
   - Facilitating continued participation by providers in rural areas with a relatively small number of available providers and/or training locations; and
   - Assisting with the provision of a quality workforce for the State of Texas.

Programmatic Outcomes:
Several of Texas' Boards manage workforce areas that cover large geographic areas and/or contain a high percentage of rural, remote locations. Typically, the availability of providers in such areas is much lower. It is critical that providers continue to participate in the WIA certification system in order to ensure that eligible participants have access to training programs, and ideally a variety of programs, that are within a reasonable commuting distance.

The Boards support the IE review process as a comprehensive approach for verifying the effectiveness of Texas' community and technical colleges in achieving their local and statutory missions. The IE review process provides for the systematic use of evaluation results to continuously improve institutional performance and programs. The granting of the waiver request would provide for non-duplication of performance reporting and evaluation processes and ensuring availability of a variety of quality WIA-certified programs from which eligible participants can select training option(s).

4. **Individuals Impacted by the Waiver:**
Eligible Training Provider System (ETPS) stakeholders affected by this request include:
   - Training Providers with THECB-approved programs that are subject to the IE process, Boards, and the Commission would benefit from streamlined subsequent eligibility application requirements, review and eligibility determination processes.
   - WIA participants eligible for training services would have access to a wider variety of training providers, programs and physical training locations.

5. **Process used to Monitor Progress and Implementing the Waiver:**
The Commission will implement steps that include, but are not be limited to:
   - Proposing amendments to Commission Rule addressing performance reporting exceptions for THECB-approved programs;
   - Providing notification of adopted Rule amendments by modifying:
     - policy documents issued through Workforce Development Letter;
     - automated, Internet-based application system application items and error handling requirements; and
     - documents posted in the public view of the automated system;
   - Providing information to providers by mail and through the applicable provider associations; and
   - Providing training and technical assistance to Board contacts responsible for application review and approval.

   Notice to Boards. As noted above, notice to Boards would occur via issuance of WD Letter(s), as well as through provision of training and/or technical assistance. These steps would be taken prior to the effective date of the waiver implementation.

STATE OF TEXAS
WAIVER REQUEST
WORKFORCE INVESTMENT ACT

Transfer of WIA Funds between Adult and Dislocated Worker Programs

The Texas Workforce Commission, the state operational entity for the Workforce Investment Act, is requesting a waiver to eliminate the 20% limitation on transferring WIA funds between Adult and Dislocated Worker programs. The waiver would provide an unlimited ability to transfer funds between these titles. In granting of this waiver, the Commission will ensure that the critical workforce needs of the local communities are met.

This waiver request follows the format identified in WIA §189(i)(4)(B) (29 USCA §2939(i)(4)(B)) and WIA Regulations at 20 CFR §661.420(c).

1. **Statutory Regulations to be Waived:** WIA §133(b)(4) (29 USCA §2863(b)(4)) and WIA Regulations at 20 CFR §667.140, provide that with the approval of the governor, Local Workforce Development Boards may transfer up to 20 percent of a program year allocation for adult employment and training activities, and up to 20 percent of a program year allocation for dislocated worker employment and training activities between the two programs.

   In 1995, with the passage of House Bill 1863, the Commission was created to administer a variety of employment and training programs to help adults and youth develop the job skills necessary to meet the occupational needs of employers and the state. That legislation envisioned a statewide workforce investment system made up of the Commission, the 28 Boards and their service providers, known as the Texas Workforce Network. As a result of the Commission's leadership, Texas implemented WIA in 1999, a full year ahead of the federal mandate. One year later, all 28 Boards were operational and the Texas Workforce Network was delivering services statewide. The Commission oversees the Boards' service delivery that is based on the establishment of local control over large-block granted programs. The Texas Workforce Network has three underlying principals:
   - employer focused to meet the workforce needs of businesses and industries;
   - locally designed service delivery plans to serve current workers and individuals entering the labor force for the first time; and
   - integrated service delivery to allow the broadest range of job seekers to access employment assistance.

2. **State or Local Statutory Regulatory Barriers:** There are no state or local statutory or regulatory barriers to implementing the waiver. Commission regulations and policy statements are in compliance with current federal law. Upon notification of the approval of this waiver, Commission regulation and policy will be amended to comply with the terms of the waiver.

3. **Goals to be Achieved by the Waiver:**
   - Improve the ability of Boards to respond to changes within their local areas;
   - Increase local control for program delivery;
   - Increase employer collaboration between industry need and worker training;
   - Increase accountability at the state, local and service provider levels; and
   - Provide greater flexibility to Boards in designing and implementing WIA programs.

   Programmatic Outcomes by the Waiver: Boards have exercised their option under the law to transfer funds. By virtue of Texas' size and diverse population, WIA customer needs vary greatly from one geographical area to another. This increased flexibility and control to transfer funds between adult and dislocated workers would allow Boards to better respond to changes within their areas, thus, allowing Boards the ability to most effectively use these limited funds.

   The role of the Boards is to plan, oversee and evaluate the delivery of all workforce training and services in their respective areas through One-Stop centers. Boards would be encouraged to design innovative programs unique to their Board needs and priorities. Programs designed according to the specific needs of Boards result in increased local and service provider accountability. The Commission supports the Boards in each of those areas, and provides continued technical assistance and program monitoring. The granting of the waiver will allow Texas to continue to meet the challenges of the future with strong partnerships, employer participation, and the continued support of state and federal leaders.

4. **Individuals Impacted by the Waiver:**
   This waiver will benefit Boards, One-Stop centers, employers, customers, and service providers. The following are additional impacts of the waiver:
   - Program participants will benefit because Boards will have the flexibility to design programs based on local needs and priorities.
   - Increased utilization will result in more customers being served.
   - Boards will have the flexibility to move funds where they are needed.

5. **Process used to Monitor Progress and Implementing the Waiver:**
   The Commission has a successful monitoring and performance accountability system that measures results for job seekers and employers using the Texas Workforce Network. The Commission continuously analyzes performance reports and compares actual performance with contract benchmarks. The Commission will continue to make adjustments to monitoring performance requirements to ensure that performance goals and objectives are met for all WIA Adult and Dislocated Worker programs. The Commission will monitor progress on this waiver by reviewing monthly expenditure and performance reports submitted by Boards and from regularly scheduled conference calls with Board executive directors. Provisions in the contracts for the programs funded with statewide activity funds address specific performance measures.

   Notice to Boards. Notice to Boards would occur via issuance of Workforce Development Letter(s), as well as through provision of training and/or technical assistance. These steps would be taken prior to the effective date of the waiver implementation.

STATE OF TEXAS
WAIVER REQUEST
WORKFORCE INVESTMENT ACT

Use of the Eligible Training Provider System for Older and Out-of-School Youth

The Texas Workforce Commission, the state operational entity for the Workforce Investment Act, is requesting a waiver of the requirement to competitively procure training providers for Older and Out-of-School Youth. Instead, Local Workforce Development Boards would have the option to use the Eligible Training Provider system to secure training providers for these two youth populations.

This waiver request follows the format identified in WIA §189(i)(4)(B) (29 USCA §2939(i)(4)(B)) and WIA Regulations at 20 CFR §661.420(c).

1. **Statutory Provisions to be Waived**:
   - WIA §123 (29 USCA §2843) provides that local areas will award grants or contracts for youth services based on a competitive process; and
   - WIA §134 (d)(4) (29 USCA §2864(d)(4)) limits access to the eligible training providers to Adults and Dislocated Workers.

In 1995, with the passage of House Bill 1863, the Commission was created to administer a variety of employment and training programs to help adults and youth develop the job skills necessary to meet the occupational needs of employers and the state. That legislation envisioned a statewide workforce investment system made up of the Commission, the 28 Boards and their service providers, known as the Texas Workforce Network. As a result of the Commission's leadership, Texas implemented WIA in 1999, a full year ahead of the federal mandate. One year later, all 28 Boards were operational and the Texas Workforce Network was delivering services statewide. The Commission oversees the Boards' service delivery that is based on the establishment of local control over large-block granted programs. The Texas Workforce Network has three foundations:

- employer focused to meet the workforce needs of businesses and industries;
- locally designed service delivery plans to serve current workers and individuals entering the labor force for the first time; and
- integrated service delivery to allow the broadest range of job seekers to access employment assistance.

The Eligible Training Provider System requires that training providers meet rigid requirements for certification to provide training for Adult and Dislocated Workers.. The Commission believes that the Older Youth (19-21) and Out-of-School Youth would benefit from the services provided by these certified training providers. Allowing the Boards to use the Eligible Training Provider System for Older and Out-of-School Youth will result in streamlining services and increasing local flexibility.

The Commission and Boards are committed to ensuring that the appropriate youth services are provided in the ten required program elements. To this end, the Commission has co-

sponsored four Youth Forums with the Department of Labor that addressed topics such as how to leverage resources and how to develop partnerships to deliver required program elements. The Commission invested several million dollars in statewide activity funds to ensure Boards and local youth service providers received the technical assistance necessary to deliver quality youth programs.

2. **State or Local Statutory or Regulatory Barriers:**
   There are no state or local statutory or regulatory barriers to implementing the requested waiver. Commission regulations and policy statements are in compliance with current federal law. Upon notification of the approval of this waiver request, Commission regulations and policy will be amended to comply with the terms of the waiver.

3. **Goals to be Achieved by the Waiver:**
   - Improve youth services through increased customer choice in accessing training opportunities in demand occupations;
   - Increase the number of training providers for Older and Out-of-School Youth;
   - Provide Boards more flexibility in securing service providers;
   - Promote better utilization of service providers in rural areas; and
   - Eliminate duplicate processes for service providers.

   Programmatic Outcomes:
   The numbers of training providers in workforce areas will increase. Training services for youth will be available in a faster and more efficient manner. Many Boards find it difficult to secure training providers willing to competitively bid to provide training to Older and Out-of-School Youth. When Boards are required to competitively procure training services, the time period for matching training providers to youth who are in need is lengthened considerably. By allowing Boards to purchase training services for Older and Out-of-School Youth from the Eligible Training Provider system , youth will be able to access training services more quickly. Additionally, youth will be able to choose the training provider they prefer, if there is more than one certified training provider to choose from.

4. **Individuals Impacted by the Waiver:**
   - Older and Out-of School Youth will benefit because they will be able to select from a list of certified training providers and will receive services more quickly.
   - Boards will benefit because they will not have to direct their resources to costly and time consuming competitive procurements.
   - Training providers will benefit because they will not have to follow two separate procedures to provide training for Adult and Dislocated Workers, which requires certification, and for Older and Out-of-School Youth, which requires competitive bidding.

5. **Process used to Monitor Progress and Implementing the Waiver:**
The Commission will issue a Workforce Development Letter to the Boards. The WD Letter will provide direction to the Boards on the use of the Eligible Training Provider System for Older and Out-of-School Youth; identify the criteria for determining when the use of Individual Training Accounts is appropriate; provide guidance to Boards on how to assist youth in choosing the appropriate training provider; and provide direction to Boards in modifying their local integrated plan. Progress on the waiver will be monitored through regular dialogue with Boards and training providers who attend the state's Quarterly Youth Forums and through conversations with Board executive directors on the bi-monthly conference calls or Quarterly Director's meetings.

Notice to Boards. As noted above, notice to Boards would occur via issuance of Workforce Development Letter(s), as well as through provision of training and/or technical assistance. These steps would be taken prior to the effective date of the waiver implementation.

STATE OF TEXAS
WAIVER REQUEST
WORKFORCE INVESTMENT ACT

15 Percent Limit on Statewide Activities

The Texas Workforce Commission, the state operational entity for the Workforce Investment Act, is requesting a waiver to remove the 15 percent limit on the amount the Governor may reserve for statewide activities and to allow the Governor the flexibility to determine the amount reserved for statewide activities. The reserve amount greater than 15 percent will be distributed to the Local Workforce Development Boards to fund programs and activities administered and designed by the Boards at the local level. Administrative costs would remain at or below 5 percent at the state level.

This waiver request follows the format identified in WIA §189(i)(4)(B) (29USCA §2939(i)(4)(B)) and WIA Regulations at 20 CFR §661.420(c).

1. **Statutory Provisions to be Waived:**
   - WIA §128(a)(1) (29 USCA §2853(a)(1)) provides that the Governor of a State shall reserve not more than 15 percent of the amounts allotted to the State to carry out statewide youth activities and statewide employment and training activities for adults or dislocated workers.
   - 20 CFR §667.130(b) restates that a state is limited to 15 percent for reserving Adult, Dislocated Worker, and Youth funds for statewide activities.

   In 1995, with the passage of House Bill 1863, the Commission was created to administer a variety of employment and training programs to help adults and youth develop the job skills necessary to meet the occupational demands of employers and the state. That legislation envisioned a statewide workforce investment system made up of the Commission, the 28 Boards and their service providers, known as the Texas Workforce Network. As a result of the Commission's leadership, Texas implemented WIA in 1999, a full year ahead of the federal mandate. One year later, all 28 Boards were operational and the Texas Workforce Network was delivering services statewide. The Commission oversees the Boards' service delivery that is based on the establishment of local control over large-block granted programs. The Texas Workforce Network has three underlying principals:
   - employer focused to meet the workforce needs of businesses and industries;
   - locally designed service delivery plans to serve current workers and individuals entering the labor force for the first time; and
   - integrated service delivery to allow the broadest range of job seekers to access employment assistance.

   WIA formula funded programs are not always able to provide services locally that address employers' demands for skilled employees, or remove job seekers' barriers to employment. Limited to formula funded programs, Boards often lack the freedom to create innovative programs at the local level that are reasonable and necessary to address unexpected needs of

their employers and respective customers. Statewide activity funds give Boards the flexibility and resources to provide services to employers and job seekers.
The underlying purpose for the Governor's reserve for statewide activity funds is to further enhance and integrate WIA program activities and to expand existing allowable activities. For example, statewide activity funds are used locally for special initiatives to enhance the One-Stop system and to develop partnerships with the WIA partners. The Commission is committed to system-wide continuous improvement by carrying out required and allowable statewide employment and training activities prescribed in WIA. However, with the current economic slowdown, the demand on statewide activity funds has increased, particularly from employers. The increased demand for statewide activity funds among competing customers may be greater than the amount available with the 15 percent ceiling. Waiving the 15 percent ceiling on statewide funds gives Texas more latitude to increase allowable employment and training activities and gives the Commission and local areas greater flexibility to create programs that improve services to employers and job seekers.

Texas is fully committed to the WIA concept of implementing innovative and comprehensive workforce investment systems tailored to meet the particular needs of local and regional labor markets. This waiver will allow Texas to fully implement this concept.

2. **State or Local Statutory or Regulatory Barriers:**
There are no state or local statutory or regulatory barriers to implementing the requested waiver. Commission regulations and policy statements are in compliance with current federal law. Upon notification of the approval of this waiver request, Commission regulation and policy will be amended to comply with the terms of the waiver.

3. **Goals to be Achieved by the Waiver:**
   - Improve the ability of Boards to respond to employers and job seekers that do not fit statutory defined populations within their local areas;
   - Increase local control for program delivery by encouraging locally designed service delivery plans;
   - Provide greater flexibility to Boards in designing and implementing WIA programs; and
   - Increase accountability at the state, local, and service provider levels by ensuring that statewide activity expenditures at every level are reported through the existing monitoring and performance accountability system and are based on negotiated performance measures that evaluate the program's effectiveness.

Programmatic Outcomes:
Statewide activity funds enhance the service delivery of the required WIA programs and activities at the local level. Funding statewide activities beyond the 15 percent limit will enable Boards to use these additional funds to tailor their programs to meet real, locally determined employer and job seeker needs and to further reform the state's workforce investment system.

Statewide activity funds provide local areas with the flexibility to respond to the more immediate needs of customers or of the WIA program delivery system. Statewide activity funds are used to address the needs of customers affected by unforeseen events or natural

disasters that cause sudden layoffs in workforce areas. For example, the events of 9/11 had a direct affect on two of the state's most populous workforce areas. Two major airlines maintain their operational centers, or hubs in Texas. As passenger numbers declined, the airlines cancelled scheduled flights, reduced routes, and laid off their employees. Layoffs from the airlines impacted other related businesses that depend on the economic health of the airlines, particularly at these hubs. The two workforce areas, where these airlines have their hubs, suffered a disproportionate number of lost jobs. 9/11 made the state aware that the 15 percent limit on statewide activity funds reduces the choices available for workforce areas to respond to the immediate needs of businesses and employees.

These funds are also used to create infrastructures that provide long-term benefits to customers, as well as to improve delivery of direct client services. Statewide funds used for funding innovative demonstration projects often become the models for implementing statewide programs. Because these projects are designed according to the specific needs of local areas, accountability at the local and service provider level is increased. Projects funded at the local level with statewide activity funds promote the workforce system as a valued partner with business, labor, and community organizations.

4. **Individuals Impacted by this Waiver:**
This waiver will benefit local workforce areas, employers, Boards, service providers, One-Stop center staff, and participants. The economic downturn and the events of 9/11 created new customers that do not fit statutory defined populations. This waiver will allow Boards to assist new customers with specialized needs. The flexibility of these funds encourages Boards to increase their services and become more responsive and innovative with their service providers to meet existing and new customers' needs. This waiver encourages Boards to partner with more employers and business, labor and community organizations, which promotes universal access for any individual to access the One-Stop system.

5. **Process to Monitor Progress in Implementing the Waiver:**
The Commission, with input from Boards, service providers, and the public, develops programs and activities funded with statewide activity funds. The Commission has a successful monitoring and performance accountability system that measures results for job seekers and employers using the Texas Workforce Network. The Commission continuously analyzes performance reports and compares actual performance with contract benchmarks. The Commission will continue to make adjustments to monitoring performance requirements to ensure that performance goals and objectives are met for all WIA statewide activity programs. The Commission will monitor progress on this waiver by reviewing monthly expenditure and performance reports submitted by Boards and from regularly scheduled conference calls with Board executive directors. Provisions in the contracts for the programs funded with statewide activity funds address specific performance measures.

Notice to Boards. Notice to Boards would occur via issuance of Workforce Development Letter(s), as well as through provision of training and/or technical assistance. These steps would be taken prior to the effective date of the waiver implementation.

Description of the Process of Notice and Opportunity For Boards to Comment on the Plan

The Commission aggressively sought input from the Boards and from the public both before and during the development of the Waiver Plan. Boards were given ample opportunity to provide comment on the proposed WIA Waiver Plan. The Commission made the proposed Waiver Plan available to the Boards and the public through several media both before and during the comment period, as documented by the following activities:

1) During the April 2, 2002 Commission meeting, Mr. Luis Macias, Director of Workforce Development, stated that staff have discussed waivers available from the DOL with the Boards. In addition, Mr. Macias indicated that staff have asked Boards to submit recommendations for consideration by the Commission.

2) During the April 9, 2002 Commission meeting, Chair Rath requested that staff prepare an outline of the ideas and concepts to send to the Boards to solicit their input regarding waiver requests.

3) During the April 23, 2002 Commission meeting, the Commission discussed waivers and provided an opportunity for public comment regarding waiver requests.

4) The opportunity for comment regarding waiver requests was posted as an agenda item for the April 30, 2002 Commission meeting.

5) During the May 7, 2002 Commission meeting, the Commission discussed waivers and provided an opportunity for public comment regarding waiver requests.

6) During the May 14, 2002 Commission meeting, Chair Rath noted that the community colleges recommended the Agency request a waiver from DOL regarding programs that are currently approved by the Texas Higher Education Coordinating Board (THECB) relative to the subsequent eligibility standard. In addition, Chair Rath emphasized that the Commission has indicated its desire to work with the community colleges and requested that the message be conveyed to them in writing, in particular concerning the waiver.

7) During the May 21, 2002 Commission meeting, the Commission discussed waivers and provided an opportunity for public comment regarding waiver requests.

8) The opportunity for comment regarding waiver requests was posted as an agenda item for the May 28, 2002 Commission meeting.

9) During the June 7, 2002 Commission meeting, Chair Rath noted that three Board executive directors were present, and said their input concerning the waivers is very important. The three Board executive directors provided comment on the waiver requests.

10) The opportunity for comment regarding waiver requests was posted as an agenda item for the June 11, 2002 Commission meeting. In addition, the Commission approved the recommendation that the proposed Waiver Plan be published in the *Texas Register* for public comment.

11) A copy of the proposed Waiver Plan and a request for comments was sent by e-mail to all of the Board executive directors on June 20, 2002.

12) The proposed Waiver Plan and request for comments was posted on the Commission website on June 20, 2002.

13) A copy of the proposed Waiver Plan was available for public inspection at the Commission offices.

14) The proposed Waiver Plan and request for comments was published in the *Texas Register* on June 28, 2002.

15) The proposed Waiver Plan was mailed to all of the Private Sector and Labor Sector Board members for their review and comment. The packets were mailed on Friday, July 5, 2002 to 511 of these Board members.

16) On July 8, 2002, copies of the proposed Waiver Plan and request for comments were sent via overnight delivery to 11 members of the Apprenticeship and Training Advisory Committee.

17) On July 9, 2002 another invitation (via e-mail) was sent to Board executive directors to comment on the proposed Waiver Plan. This e-mail also extended the comment period to allow Boards additional time to prepare comments.

18) The opportunity for comment on the proposed Waiver Plan was posted as an agenda item for the July 9, 2002 Commission meeting.

19) The proposed Waiver Plan was included as an agenda item on the July 12, 2002 biweekly teleconference call with all of the Board executive directors

20) On July 15, 2002, the Commission Chair, Diane Rath, e-mailed another invitation to Board executive directors to comment on the proposed Waiver Plan.

Copies of all Thirty-nine Comments Received on the Plan
(Attached as Hard Copies)

Please note that comments received on the Plan include comments on proposed Waiver Requests, which were originally numbered 1 through 6. We have since omitted Waiver Request No. 3, regarding the reallocation process. Therefore, for ease of review and clarity, please note that commenters are generally referring to the following numbered waivers:

- **Waiver No. 1**: Customized Training: 50% of Cost of Training Employer Match;
- **Waiver No. 2:** Eligible Training Provider (ETP) Performance Reporting Requirements for Subsequent Eligibility Determination;
- **Waiver No. 3: Omitted;**
- **Waiver No. 4:** Transfer of WIA Funds between Adult and Dislocated Worker Programs;
- **Waiver No. 5:** Use of the Eligible Training Provider System for Older and Out-of-School Youth; and
- **Waiver No. 6:** 15 Percent Limit on Statewide Activities.

DEATS & LEVY, P.C.
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

RECEIVED
JUL 18 2002
Dir of Workforce Dev

B. CRAIG DEATS*
RICHARD LEVY

*BOARD CERTIFIED
LABOR & EMPLOYMENT LAW
TEXAS BOARD OF LEGAL SPECIALIZATION

2204 LAKE AUSTIN BLVD.
AUSTIN, TEXAS 78703
(512) 474-6200
FAX (512) 474-7896

July 10, 2002

Luis Macias
1117 Trinity
Room 504BT
Austin, Texas 78701-1920

Dear Mr. Macias,

On behalf of the Texas AFL-CIO, I am writing in response to the Texas Workforce Commission (TWC) request for comments on proposed waivers to the Workforce Investment Act. Attached you will find specific comments on each of the six waivers proposed by the TWC.

At the outset let me state my concern that the public input on this proposal will in all likelihood be extremely limited due to the very short time period allotted for public comment. I would note that you notified Texas AFL-CIO President Joe Gunn on July 8, 2002 with the comment period to end July 12, 2002. We have personally heard from several individuals and some groups of concerns in this regard as well. It seems to us that the TWC would be more interested in engaging the stakeholders on a policy issue of this magnitude. I would ask that you extend the deadline for public comment and do an extensive outreach to facilitate greater public participation.

As you will note, our labor federation has deep concerns that many of these waivers will further erode the ability of local workforce boards to operate programs for adults, dislocated workers and youth; will diminish services to special targeted groups most in need of services and, without adequate safeguards, diminish accountability in a system already limited in its ability to provide good information about what is happening to workers who receive WIA services.

We firmly believe that WIA programs must address the needs of those who are unemployed, those who are low wage, low skill workers as well as those who need career upgrading. These needs can best be met by the public institutions and through the active participation of labor organizations whose experience in the labor market and in skill development can be critically important in the design and operation of WIA programs.

It is apparent that many of these waivers are driven by funding limitations. As we suggest in our comments the solution is not to request a waiver to shift funds from one program to the other, but rather to enlarge the pool of federal funds available to all programs.

We hope that our comments will be carefully considered prior to submission to the U.S. Department of Labor. We ask that our comments accompany the TWC transmittal to the Secretary.

Additionally, for any waivers that are approved, we expect the state to conduct and disseminate both formative and summative evaluations of the impact of each approved waiver and to give all interested parties the opportunity to comment on the advisability of continuing or renewing the waiver.

We are available to discuss our concerns at any time.

Sincerely,

Richard Levy
Legal Director
Texas AFL-CIO
2204 Lake Austin Blvd
Austin TX 78703

cc: Joseph Juarez
Emily DeRocco
Joe Gunn
Emmett Sheppard
Lynn Minick

Texas AFL-CIO Comments on WIA Waivers
Proposed by the Texas Workforce Commission
July 2002

1. Customized Training: 50% of Cost of Training Employer Match

Despite the seeming concern for providing quality services to job seekers, this proposed waiver very likely will result in a dangerous lack of accountability. Our concern is that the potential is simply too great that this waiver could lead to very questionable public subsidies. The criteria for determining "desirable quality characteristics" of training should be tied to a long-term investment in the workforce. Without a clear definition what those criteria would be, this could open the path to investing public resources in high-turnover jobs with little or no career path for workers.

We believe that the "transferability of skills" language in this waiver could be used to unfairly support one employer over another within a competitive local industry sector. The role of the WIB should be to work not with one particular employer against another, but rather to work with employers across the spectrum to strengthen industries by investing in the quality of the workforce, rather than providing reduced-cost training to select employers.

Furthermore, there does not seem to be any additional effort to hold employers accountable for what would be greater public investment in private enterprise. Who would make determinations about employers? Would "low-road" employers, those with poor labor practices or a poor history of delivering returns on public investment be allowed to access the same public training subsidies as those who are "high-road" employers, those who make investments in their workers, their companies and their communities?

There is no clear process for scrutinizing the practices of businesses that might profit via this waiver. Such a process should set fixed standards for employers and require mandatory review by the state AFL-CIO and all appropriate labor organizations and central labor councils. We would expect to see this public investment tied to quality performance goals—commitments from employers—that address issues such as: placement rates, retention rates, entry and 6-month wage levels, hours worked, employer-sponsored benefits like health insurance, career ladders.

2. Eligible Training Provider (ETP) Performance Reporting Requirements for Subsequent Eligibility Determination

This proposed waiver raises far too many questions about how this particular solution will ultimately meet the needs of Texas job seekers, those seeking training and employers. Those unanswered questions undermine what is a reasonable concern with the process for subsequent eligibility and the Workforce Investment Act.

First of all, it is not clear whether this waiver would provide privileged eligibility for higher education institutions beyond those named in WIA §122 (a)(2)(A)(i), those eligible to receive Federal funds under Title IV of the Higher Education Act of 1965. If this waiver did offer the same initial and subsequent eligibility process to other postsecondary education institutions, it would seem to go beyond the intent of the law. It is also not clear whether registered apprenticeship programs are included in this proposal.

We would expect to see a waiver proposal of this sort go further in ensuring service to job seekers and employers by clarifying certain details. Beyond the benefit of removing the burden of duplicate reporting requirements for postsecondary institutions, there are serious questions about how that process would meet the needs of the state, job seekers and employers. Would the information collected by the Texas Higher Education Coordinating Board be provided to the Texas Workforce Commission for the purpose of approving subsequent eligibility? Would the same information be provided to consumers, a step that seems necessary in light of supporting the "consumer choice" system envisioned and articulated in WIA.

We understand both the reluctance of providers who have received little to no WIA funds to provide the performance information necessary for subsequent eligibility, and we understand the need to retain those same providers on the state's list—particularly in rural areas—in order to

ensure a diverse and rich selection of training opportunities for job seekers. Nevertheless, this proposal omits too many details about how this waiver would create a remedy for this dilemma. Though the crisis is real, the lack of clarity in this waiver creates a slippery slope that could result in a lack of important information for the Texas Workforce Commission and consumers about postsecondary training providers.

3. Allowing the State to Design a WIA Reallocation Process

In the past, there appear to have been problems with large amounts of unexpended WIA funds WIA in certain states. However, there is no discussion in this section on the nature and extent of the expenditure problem within the state itself and the description of the proposed reallotment process is somewhat confusing. As a result, it is difficult to respond specifically and directly to the proposed process.

Our reading of this section suggests that the state is proposing to capture any unexpended funds at the end of each program year instead of capturing unobligated funds. The ability to carry over a certain amount of funds helps to ensure that commitments made to workers in training programs that go beyond a single program year are met.

We are concerned that the state's proposals in regard to reallocation would have the affect of denying workers the opportunity to continue in training beyond the end of a program year if training funds have been obligated, but not expended. This could force large numbers of workers to drop out of training because the state has recaptured unexpended funds. Additionally, we are concerned that such a policy could force workers into short-term, low-skill training in order to meet the annual expenditure requirements and deadlines.

4. Transfer of WIA Funds between Adult and Dislocated Worker Programs

We strongly object to the state's proposals to allow a transfer of funds between the adult and dislocated worker funding streams beyond the 20% cap currently allowed under WIA. The purpose of these discrete funding streams is to assure that the special needs of dislocated and adult workers are met through a guaranteed funding base. A separate and adequately funded dislocated worker program assures that local boards and one-stops provide dislocated workers with the services they need and that the state maintains an adequate rapid response capability.

At a time when our state is experiencing unacceptably high unemployment levels, where new layoffs are announced every day and while large numbers of Texas families still live in poverty, it is blatantly unfair to jeopardize the stability of these two funding streams for the workers who count on these services to help them and to pit the needs of one group against the other.

We believe the state's proposals to remove the cap on transfers are not waiverable since waivers relating to the "allocation of local formula funds" are not allowed. Local formula funds are dedicated to serving identified groups of workers and allowing further transferability would have the affect of excluding groups of workers who would otherwise be eligible to receive services

Additionally, there is no evidence, based upon the PY 2000 annual WIA reports, that any sub-state areas are having problems in exceeding their adult or dislocated worker program allotments. If shortfalls occur, the law provides other mechanisms for the state to seek funds through the National Emergency Grant program, as well as Pilots and Demonstration programs.

Finally, we recognize that there are clearly insufficient resources. The solution is not to raid one funding stream to make up for the shortfalls in the other, but to advocate aggressively for increased federal funds to serve all groups of workers and, in doing so, to ensure that their special needs are addressed through dedicated funding streams.

5. Use the Eligible Training Provider System for Older and Out of School Youth

There is little evidence that ITAs are working well anywhere in the country, and that they are more efficient in providing adult workers with adequate training or support services. In fact, national evidence from the Center on Law and Social Policy suggests that very few workers are accessing training services and that fewer resources are going to training under WIA than JTPA.[1]

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[1] Center for Law and Social Policy, *Comments regarding WIA Reauthorization and Linkages with the TANF Program,* June 28, 2002.

The state itself provides no evidence that vouchers are better. It offers no assurances that it will engage in a careful monitoring of the outcomes for individuals who access ITAs.

As a result, we strongly object to the state's proposals to waive requirements that services for Older Youth and Out-of-School youth be delivered through contracts and instead provide services to these youth through voucher-based Individual Training Accounts.
If the state proposals are approved, disadvantaged young people would be subject to the vagaries of a questionable voucher system at a time in their lives when they need strong guidance and extensive support. Vouchers will sever important ties to the public education system and even further limit the chance that dropouts and older youth will have access to the basic education skills and the full array of services they need to build strong academic and occupational skills. Granting this waiver will not ensure that quality will be part of an Out-of-School or Older Youth education and training program. Providing vouchers through Individual Training Accounts will provide no assurances that high quality standards will be met.

There is recognition in the Workforce Investment Act that special populations can best be served through contracts so that they could be afforded a comprehensive range of services tailored to their needs. This is especially important for young people who have significant barriers to academic and occupational achievement.

The state blames its own procurement system for the difficulties in providing youth services and wants to place the responsibility for helping these youngsters on the youngsters themselves. Why doesn't' the state review its procurement system and improve it so that youth can be better served within a process that has proven successful in addressing their needs?

6. 15% Limit on Statewide Activities

The state's request to remove the 15 percent limit on the amount the Governor may reserve for statewide activities, and to allow the Governor to unilaterally determine the amount reserved for statewide activities violates the statutory and regulatory requirements that prohibit waivers of allocation of funds to local areas.

Contrary to the statements in the waiver request there is no evidence that "local programs are not always able to provide services locally that address employers demand for skilled employees, or remove job seekers' barrier to employment." WIA provides local boards with ample flexibility to create innovative programs to address employer needs.

The allotment process under WIA reflects the strong belief that programs should be operated at the local level. The formula provides assurances that funds will be based upon the most salient characteristics of the local labor market and local labor force. The state has no authority or right to take away what has been promised to local communities under WIA and to deny workers the right to access employment and training services within their local communities.

We do not question that more resources are needed to support job training programs. We object to the state's attempts to raid local coffers to pay for its own intiatives.

We suggest that the state look to the national discretionary funds available at the U.S. Department of Labor and engage with others, including the labor movement, in efforts to secure increased supplemental appropriations for FY 2002 and increased budget authority and appropriations for FY 2003 and beyond for WIA and related programs.

Cameron WORKS Inc.

245 East Levee St. • Brownsville, TX 78520 • (956) 548-6700 Administration

RECEIVED
JUL 29 2002
Dir of Workforce Dev

July 19, 2002

Mr. Luis M. Macias, Director
Workforce Development Division
1117 Trinity, Room 504-BT
Austin, Texas 78701-1920

SUBJECT: Comments on Proposed WIA Waivers

Dear Mr. Macias:

Thank you for the opportunity to comment on the Texas Workforce Commission's (TWC) proposed Workforce Investment Act (WIA) waivers. We would have submitted our response sooner but wanted to build consensus with the Board membership prior to responded to your letter. Our Board met last night (July 18) and briefly discussed the six proposed waivers. We offer the following comments:

Waiver 1: Customized Training Employer Match: 50% of Cost of Training Employer Match: We strongly support this waiver. Our Board is very interested in developing customized training agreements with employers. The hesitation by employers to participate in customized training is mostly due to the required 50% match.

Waiver 2: Eligible Training Provider (ETP) Performance Reporting Requirements for Subsequent Eligibility Determination: We support this waiver.

Waiver 3: Allowing the State to Design a WIA Reallocation Process: We do <u>not</u> support this waiver. As stated in the State's request to the Department of Labor, the Texas Workforce Network has three underlying principles with one of those being "locally designed service delivery plans..." In addition, the Waiver Request states that the "Commission oversees the Boards' service delivery that is based on the establishment of *local control* over large-block granted programs." With this and as stated by another Board area, this proposed waiver would decrease local board flexibility. We have

learned to manage our WIA programs based on the 80% obligated by first year and 100% expended by second year. We do not support adding quarterly expenditure benchmarks to the WIA program.

Waiver 4: Transfer of WIA Funds between Adult and Dislocated Worker Programs: We support this waiver.

Waiver 5: Use of the Eligible Training Provider System for Older and Out of School Youth: We support this waiver.

Waiver 6: 15 Percent Limit on Statewide Activities: We support this waiver. We would also like to add that any amount reserved for statewide activities be formula allocated to Boards and not distributed via competitive procurement.

Once again, thank you for this opportunity to comment. Should you have any questions or concerns, you may contact me through the Cameron Works, Inc. office at (956) 548-6719.

Sincerely,

Gilbert Elizondo
Chair

Cc: Stella Garcia, Executive Director, Cameron Works, Inc.
Diane Rath, Chair and Commissioner Representing the Public
T.P. O'Mahoney, Commissioner Representing Labor
Ron Lehman, Commissioner Representing Employers

John W. Wroten, Jr. *Corporate Vice President*
Group Executive
Administration

H1-5A-05
5400 Legacy Drive
Plano, Texas 75024

EDS

RECEIVED
JUL 18 2002
Dir of Workforce Dev

July 12, 2002

Luis Macias, Director
Workforce Development Division
1117 Trinity, Room 504BT
Austin, Texas 78701-1920

Dear Mr. Macias,

As a private sector business representative on the North Central Texas Workforce Development Board, I appreciate the opportunity to provide input on ways to improve the statewide workforce system in Texas. Dialogue between partners is critical to the success of our mission. I strongly support efforts to strengthen local flexibility in designing and implementing services for both businesses and job seekers. This concept is a key principle of the Workforce Investment Act (WIA).

While each of these proposed waivers appear to address the concept of flexibility, they seem to focus on specific details that I am not familiar with. I have spoken with the staff, which supports the North Central Texas Workforce Development Board, and they believe that while these specific items are improvements, they are not all encompassing. I would recommend that you contact directly Ms. Linda Davis, Executive Director of the North Central Texas WorkForce Board, and seek her input.

Respectfully,

John W. Wroten, Jr.

Cc: Linda Davis

Ph: 972 605 6760
Fax: 972 605 6765

Facsimile Transmission

Golden Crescent
Workforce Center
Administrative Office

To: Luis Macias

Date: July 15, 2002

Pages: 3, including cover

Please see attached correspondence.

From the desk of...
Susan Snow, Administrative Assistant/Human Resources Assistant
Telephone: (361) 576-5872 Fax: (361) 573-0225
susan.snow@twc.state.tx.us

"Together...we will make a difference"

Golden Crescent
Workforce Center

ADMINISTRATIVE OFFICE
P. O. Box 1936 • Victoria, Texas 77902 • (361)576-5872 • Fax: (361)573-0225

July 15, 2002

Luis Macias
Director of Workforce Development
Texas Workforce Commission
101 E. 15th Street
Austin, Texas 78778

Dear Mr. Macias,

The Golden Crescent Workforce Development Board appreciates the opportunity to comment on the six proposed Workforce Investment Act waivers. Our comments will address each waiver separately.

Waiver 1: Customized Training Employer Match: 50% of the Cost of Training
We support this waiver. It will allow us to continue the work we have already begun with small businesses that hire most of our customers in Golden Crescent.

Waiver 2: Eligible Training Provider Performance Reporting Requirements: Subsequent Eligibility Determination
We support this waiver and believe it will enhance our ability to increase training options for eligible participants.

Waiver 3: Reallocation Requirements
We do not support this waiver because it appears that it further limits flexibility for utilization of funds.

Waiver 4: Transfer of Funds between Adult and Dislocated Worker Programs
We support this waiver and believe it will result in greater flexibility to meet local needs.

Waiver 5: Use of Eligible Training Provider System for Older and Out-of-School Youth
We support this waiver and believe it will provide more training options for older and out-of-school youth.

Waiver 6: Fifteen (15) Percent Allocation Limitation on Statewide Activities
We support this waiver and appreciate the Commission's willingness to advocate for this change.

Sincerely,

Jane G. Smith

Jane G. Smith
Board Chair

Golden Crescent
Workforce
Center

ADMINISTRATIVE OFFICE
P. O. Box 1936 • Victoria, Texas 77902 • (361)576-5872 • Fax: (361)573-0225

July 15, 2002

Luis Macias
Director of Workforce Development
Texas Workforce Commission
101 E. 15th Street
Austin, Texas 78778

Dear Mr. Macias,

The Golden Crescent Workforce Development Board appreciates the opportunity to comment on the six proposed Workforce Investment Act waivers. Our comments will address each waiver separately.

Waiver 1: Customized Training Employer Match: 50% of the Cost of Training
We support this waiver. It will allow us to continue the work we have already begun with small businesses that hire most of our customers in Golden Crescent.

Waiver 2: Eligible Training Provider Performance Reporting Requirements: Subsequent Eligibility Determination
We support this waiver and believe it will enhance our ability to increase training options for eligible participants.

Waiver 3: Reallocation Requirements
We do not support this waiver because it appears that it further limits flexibility for utilization of funds.

Waiver 4: Transfer of Funds between Adult and Dislocated Worker Programs
We support this waiver and believe it will result in greater flexibility to meet local needs.

Waiver 5: Use of Eligible Training Provider System for Older and Out-of-School Youth
We support this waiver and believe it will provide more training options for older and out-of-school youth.

Waiver 6: Fifteen (15) Percent Allocation Limitation on Statewide Activities
We support this waiver and appreciate the Commission's willingness to advocate for this change.

Sincerely,

Laura G. Sanders

Laura G. Sanders
Executive Director

Copy to Arturo

TEXAS
Department of
Human Services

COMMISSIONER
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work into comments

RECEIVED
AUG 08 2002
Dir of Workforce Dev

August 1, 2002

Luis Macias, Director
Workforce Development Division
Texas Workforce Commission
1117 Trinity, Room 504BT
Austin, Texas 78701-1920

Dear Mr. ~~Macias~~ Luis:

Recently, the Texas Workforce Commission (TWC) published for comment proposed waivers to the Workforce Investment Act (WIA). The Texas Department of Human Services (DHS) would like to offer comment on the waiver request related to the transfer of WIA funds between Adult and Dislocated Worker Programs.

The waiver request proposed by TWC would provide unlimited ability to transfer funds between the WIA Adult and Dislocated Worker Programs. As proposed, this waiver would allow a local workforce development area to transfer all funds allocated to serve low-income adults and effectively eliminate the Adult Program within the local area.

As you know, Section 134 (d)(4)(E) of the WIA statute states that "In the event that funds allocated to a local area for adult employment and training activities under paragraph (2)(A) or (3) of section 133(b) are limited, priority shall be given to recipients of public assistance and other low-income individuals for intensive services and training services…". Further, one of the stated purposes of the WIA is to reduce welfare dependency.

Because most local workforce development areas have few remaining Welfare-to-Work funds available, the WIA Adult Program is an important resource to have available for low-income individuals. Local workforce development areas experiencing a significant number of mass lay-offs may experience pressure to move significant levels of funding from the Adult Program to the Dislocated Worker Program. However, areas experiencing mass lay-offs have the ability to access National Emergency Grants to assist with increased service demands for dislocated workers. Comparable grants are not available to serve low-income individuals.

Therefore, we would encourage the TWC to consider a revision to this waiver request to ensure that an adequate level of funding for the WIA Adult Program remains available in all parts of Texas.

Sincerely,

Judy Denton

Judy Denton
Deputy Commissioner
Office of Families Services

JD:bc

Texas Feathers

The Duster Source

Texas Feathers, Incorporated
P.O. Box 1118, 2702 Morris Sheppard Drive
Brownwood, Texas 76804

915-646-1504
800-441-7894
Fax 915-643-5943

Dallas Office
320 Westway, Suite 547
Arlington, Texas 76018

817-465-8313
800-442-7894
Fax 817-465-8374

July 12, 2002

Mr. Luis M. Macias, Director
Workforce Development Division
1117 Trinity, Room 504-BT
Austin, Texas 78701-1920

Mr. Macias, after further review, I am not able to support all six waiver requests proposed by your office. My earlier letter said that I supported all six.

I originally wrote: It appears to me that each of the six requested waivers will exempt our statewide and our local workforce systems of unnecessary regulations and restrictions. I am sure that those who drafted the regulations originally had sound reasons for placing the limits on the system that the waiver requests seek to remove. As a business representative on the Tarrant County Local Area Workforce Board, I can see no reason for the waivers to be denied.

While the wording of the waiver request for the elimination of the 15% maximum on reservation of funds at the state level says "the reserve amount greater than 15% will be used for programs...administered by the Local (Boards)" I understand now that this really means the state will contract for and tell us to administer programs in our local areas. I have yet to see the state know how to contract for services in our area better than we do. **I oppose this waiver request.**

The wording of the waiver request to allow the state to design a WIA reallocation program implies that it will allow us to have more flexibility in moving funds from one program to another. I support that. What I have learned that it means is the state will be able to reallocate funds not yet spent, even if they have been obligated. We cannot operate that way and **I oppose this waiver request.**

I called your office and I hope to be able to speak with you. What I want to tell you is that the wording is misleading. I should not have to have staff interpret what you write to me. Situations like this lead to committed business representatives ask themselves why they waste their time on local area boards.

Texas Feathers, Inc.

Bill Lynch
President

cc: Ron Lehman

Texas Feathers

The Duster Source

Texas Feathers, Incorporated
P.O. Box 1118, 2702 Morris Sheppard Drive
Brownwood, Texas 76804

915-646-1504
800-441-7894
Fax 915-643-5943

Dallas Office
320 Westway, Suite 547
Arlington, Texas 76018

817-465-8313
800-442-7894
Fax 817-465-8374

July 10, 2002

Mr. Luis M. Macias, Director
Workforce Development Division
1117 Trinity, Room 504-BT
Austin, Texas 78701-1920

Mr. Macias, I have taken the time to read and understand the basics of the proposed WIA waivers and I encourage the adoption of all six.

It appears to me that each of the six requested waivers will exempt our statewide and our local workforce systems of unnecessary regulations and restrictions. I am sure that those who drafted the regulations originally had sound reasons for placing the limits on the system that the waiver requests seek to remove. As a business representative on the Tarrant County Local Area Workforce Board, I can see no reason for the waivers to be denied.

If you, or your staff, would like to learn more about my thinking on any of the waivers, please refer to the comments attached and feel free to call me to discuss them further.

Texas Feathers, Inc.

Bill Lynch
President

Waiver comments
William P. Lynch
7-10-02

1. Customized Training: 50% of Cost of Training Employer Match

   If the Local Area Workforce Boards are to be employer driven, then giving the flexibility to vary employer contributions on custom training is a good step. Employers are rightly wary of getting the government involved in anything they do. Providing additional financial incentive to participate in custom training will overcome more of that resistance. I would only caution that the scale to be created by, I assume, staff in Austin, not be too out of touch with the input of local area staff and boards.

2. Eligible Training Provider (ETP) Performance Reporting Requirements for Subsequent Eligibility Determination

   I am not very familiar with the certification that will provide the basis for the exemption (THECB). If it is considered adequate by those who are familiar with it, then elimination of duplication is always a good thing and has been one of the main focus areas for our board since its inception.

3. Allowing the State to Design a WIA Reallocation Process

   When I was attending my first workforce board meeting, I was appalled to hear about how we were planning to spend money to keep it from being reclaimed and sent back to Austin. I have since learned that we have grossly under funded needs and every dollar we spend wisely can have the impact of moving a person to gainful employment and greater economic contribution. I will not claim that we are perfect in the process. I have the sense that we sometimes spend money that achieves less than ideal results because we have to spend it where it was obligated...with no flexibility to move it. Any rule changes that will allow us to move funds from areas that cannot fully utilize them to areas of real need where constructive accomplishments can be made should be enacted.

4. Transfer of WIA Funds between Adult and Dislocated Worker Programs

   Eliminating the 20% cap on transfer of funds between these relatively similar programs will allow for important local area flexibility. Layoffs occur, often without warning and without time for adequate budget planning. This situation occurred in Tarrant County after 9-11. This waiver will facilitate more rapid response to layoffs and likely improve the speed with which dislocated workers find new, productive employment.

Waiver comments
William P. Lynch
7-10-02

5. Use of the Eligible Training Provider System for Older and Out-of-School Youth

   This falls into the category of elimination of duplication. Local area boards have already fully qualified contractors who are capable of providing the required services, are familiar with reporting requirements and "the system" and have the confidence of the staff. We should not be prohibited from competitive bidding where it is deemed worth the time and expense, but we should not be required to issue RFB's or RFP's to requalify suppliers already available to our board.

6. 15 Percent Limit on Statewide Activities

   The closer to the client the programs are based, the better chance of accomplishing the desired goal.

BRAZOS VALLEY WORKFORCE BOARD

July 2002

RECEIVED
JUL 11 2002
Dir of Workforce Dev

Mr. Luis Macias,
Director
Workforce Development Division
Texas Workforce Commission
101 East 15th Street
Austin, Texas 78778

Re: Brazos Valley Workforce Development Board
Comment on Proposed Waiver Requests Regarding
Workforce Investment Act (WIA)

Dear Mr. Macias,

Brazos Valley Workforce Development Board (BVWDB) does not support the Waiver of Statutory Provisions allowing Texas Workforce Commission (TWC) to design a WIA Reallocation Process that waives the unobligated balance standard clause in favor of an unexpended balance. Nor do we support TWC's request to be able to deobligated more frequently than at the end of the program year. These two waiver requests do not take into account the differences in overall local level WIA budgets, which demand different methods of budgeting/payments; the differences in local level sources of service subcontractors; and the differences in levels of administrative funding.

In regards to unobligated versus unexpended funds our Local Board prioritizes services to participants over infrastructure building. Therefore, equipment and automation capacity building expenditures are not procured until after summer training slots are authorized in May. While we know these automation and equipment capacity needs exist earlier in the year, we prefer not to make small local vendors go through competitive procurement unless we will be lapsing funds. Obligating funds allows an additional 90 days after June 30th to receive the equipment and automation for capacity building.

The second requested part of this waiver to deobligate funds though out the year, rather than once a year, based on predetermined expenditure rates will create problems in this Board area. An example of the problem with deobligating for failure to meet predetermined expenditure rates happen within our local WIA Youth program. In our rural Counties when subcontracting with small Independent School Districts it is normal to not get their bills except once a quarter. To obtain monthly billing would require increasing the Subcontractors operating costs for accountants to the detriment of participants. Also maintaining and staffing Subcontracts would be difficult if we were constantly threatening to deobligate funds for lack of timely billing.

So if these two waivers are granted less employment and training services will be provided in our area. Giving BVWDB less time to obligate funding will reduce our flexibility. For TWC to define timely only within the context of expenditures ignores

P. O. DRAWER 4128
BRYAN, TEXAS 77805-4128

PHONE: 979/775-4244
FAX: 979/775-3466

other local Board realities. Locally the definition of timely expenditures is impacted by many factors related to funding, local program design, performance measures and Grantor's priorities. Quarterly expenditure rates do not insure accountability, responsiveness or innovation.

In regards to the waiver requested to remove the 15 percent ceiling on Statewide Activities Funds, the BVWDB does not support this recommendation for a number of reasons. First, it creates unnecessary procurements that benefit primarily those Boards who can afford specialized proposal-writing staff. Second, using more of the State WIA funds for special projects reduces local allocations making BVWDB less able to respond to job seekers and employers. Thirdly, the innovative projects awarded are not necessarily replicable or economically beneficial across the State.

In conclusion, BVWDB thinks it is critical to remember that historically when waivers such as these are granted they are applied across all Board regardless of the consequences to services. In turn this negatively impacts access to services and can restricts the Board's ability to compete for funds. These three waivers will negatively impact our Region. It is our hope that TWC will instead design alternative program administration strategies, which support all local service concerns. We know that in the overall State funding allocation what appears to be an insignificant dollar amount is critical when it is applied to an individual participant in a rural county without other employment and training community resources.

If you have questions concerning our comments please do not hesitate to contact me. Thank you for this opportunity to comment on these proposed waivers.

Sincerely,

Mr. Tom Wilkinson
Executive Director

Cc BVWDB Chief Elected Officials
BVWDB Board Members