July 14, 1999

Mr. Eric Johnson
Workforce Investment Act Implementation Taskforce
200 Constitution Avenue, NW
Room S5513
Washington, DC 20210

Dear Mr. Johnson:

I want to take this opportunity to congratulate the Department of Labor on drafting regulations that reinforce the purpose of the Workforce Investment Act of 1998 (WIA), that is, providing "workforce investment activities, through statewide and local workforce investment systems . . . that improve the quality of the workforce, reduce welfare dependency, and enhance the productivity and competitiveness of the Nation." We welcome the opportunity to submit comments on 20 CFR Part 652, et al., Workforce Investment Act, Interim Final Rule.

As you know, Texas began fully implementing WIA on July 1. Our ability to implement early can be attributed to the foresight of our state's leadership and Congress' recognition of the strong steps taken by Texas to reform our workforce system in incorporating provisions in the Act which allow states to continue state activities and policies under prior consistent state laws.

Generally, the Commission believes that the Interim Final Rule supports Texas' intent to build on the tremendous progress already made by our state's employer-needs driven local workforce development boards in developing a workforce system based on the key principles of limited and efficient government, local control, personal responsibility, and support for strong families. However, the Commission was disappointed at the extensive focus on program regulations for adult, dislocated worker and youth activities, at the expense of anticipated guidance on the new workforce investment system. This approach seems to preserve the programmatic silos rather than seizing this window of opportunity to create a true system.

As an early implementation state, we recognize that many implementation issues have yet to be addressed. We encourage the Department to allow all states to offer input on the development of Department guidance, policies, technical assistance guides, and instructions before official release. Such a public review process would ensure efficiency and effectiveness through collaboration and partnership at the Federal, state and local levels. Texas is particularly interested in working with the Department as it develops planning guidance for Unified State Plans.

We hope these comments assist you in finalizing the Interim Rules, and would offer additional input as desired in this process. Also for your information, we are enclosing a listing of non-legislative issues, developed with our local boards, which identify potential barriers to implementing the Workforce Investment Act.

Thank you for serious consideration of our comments.

Sincerely,

Diane D. Rath
Chair and Commissioner Representing the Public

Enclosures (3)

cc: Joe Juarez, USDOL Region VI Administrator

ATTACHMENT I

COMMENTS ON
20 CFR PART 652, ET AL
WORKFORCE INVESTMENT ACT OF 1998
INTERIM FINAL RULE

SUBMITTED TO
THE UNITED STATES DEPARTMENT OF LABOR
EMPLOYMENT AND TRAINING ADMINISTRATION

SUBMITTED BY
TEXAS WORKFORCE COMMISSION
AUSTIN, TEXAS

JULY 14, 1999

TEXAS WORKFORCE COMMISSION

COMMENTS ON
WORKFORCE INVESTMENT ACT OF 1998
INTERIM FINAL RULE
20 CFR PART 652, ET AL.

The Commission applauds the effort that the Department of Labor (Department) made to reflect the spirit of the Workforce Investment Act of 1998 (WIA) allowing states flexibility in designing the implementation of the Act, and respectfully submits the following comments for your consideration:

GENERAL

1) Attention to providing regulations on the new program – adult, dislocated worker and youth activities – overshadows the minimal guidance on the new workforce investment system. This approach seems to preserve programmatic silos rather than seizing this window of opportunity to create a true system. If the One-stop system is to become the "first-stop" by employers and job-seekers, the focus should be on ensuring change, not in preserving the status quo.

2) The Commission recommends that in all regulation and policy development the Department consistently focus on the seven key principles of workforce reform, as identified in the Preamble:

- Streamline services and information;
- Empower individuals to enhance their own employment opportunities;
- Ensure universal access to core services;
- Increase accountability of states, localities and training providers;
- Establish a strong role for local boards and the private sector;
- Increase state and local flexibility; and
- Improve youth programs through academic and occupational learning.

3) While many implementation and administrative issues remain unanswered, we suggest that throughout this transition year, the Department allow states to provide input on all guidance including technical assistance guides and administrative directives prior to release as official Department policy in Training and Employment Guidance Letters or Training and Employment Information Notices.

PREAMBLE: "ALTERNATIVE ENTITIES"

Of particular concern to Texas is the Department interpretation of the "grandfather" provisions of WIA. The Preamble contradicts the provisions of WIA enacted to preserve the strength of the initiatives put in place by states that have progressively implemented workforce system reform. The regulations overstep WIA in the following statements:

"The Department believes that changing from existing JTPA boards and councils to State boards meeting the requirements of WIA § 111(b) is essential to the reforms of WIA. The Department encourages all States to create new, fully functional State Boards as early as possible …." 64 Fed. Reg. 18666.

"All groups required for membership on Workforce Investment Boards are equally important and the Department sees alternate entities as a transitional phase during which states can operate until a new Board is appointed." *Id.*

"The Department believes that changing from existing JTPA Private Industry Councils to local workforce investment boards is essential to the reforms of WIA. The Department strongly encourages all eligible areas to create new, fully functional Local Boards as early as possible …." 64 Fed. Reg. 18667.

The regulations stipulate that a change to the membership structure/composition of the state or the local boards, the alternative entities acting as boards will no longer be eligible and a new board that meets the WIA requirements must be constituted under §§ 661.210(d) and 661.330(c). Under this interpretation, an alternate entity must remain static and unresponsive to changing conditions.

To the contrary, the statute clearly does not require the strict approach suggested by the Department. The intent of the law could be more nearly met by limiting changes in an alternate entity to modifications that increase the efficiency and effectiveness of the system and increase cooperation among entities responsible for workforce services.

The regulations also add a state plan requirement to states naming a state board alternate entity. If the alternate entity does not provide for representative membership of each of the categories required by WIA state boards, the state plan must explain how the state will ensure an "ongoing role" for such an entity in the workforce investment system. § 661.210(c). This additional requirement is found nowhere in the statute. § 661.330(b)(2) contains a similar requirement when alternate entities are used in the place of local workforce boards. The local workforce plan must explain how the local board ensures an ongoing role for any WIA-required category not included on the board. Again, this requirement is not found in the WIA statute. In addition, all changes in state or local board membership structure are considered to be modifications of the plan and must be reported. See § 661.230(b)(2), § 661.355 and Preamble, page 18666.

The Commission strongly recommends the Department honor the intent of the Act, which according to Senator Kay Bailey Hutchison, recognizes "the uniqueness and foresight of the Texas workforce system by providing flexibility in the bill for our state to fully implement its new laws." Texas asks that the Department adhere to the WIA provisions that allow for the continuation of specific state activities and policies under state laws in all future federal actions, in promulgating the final regulations and in implementing operational policies and guidance. The full text of Senator Kay Bailey Hutchison's colloquy emphasizing the importance of these provisions is presented as Attachment 3.

BOARD MEMBERSHIP

Though the Act uses the plural form of “representatives” when describing board membership, 1 U.S.C.A. § 1 states that, in interpreting federal law, the plural includes the singular and so references to "representatives" can be read to mean "representative." The rule does not appear to include the one-stop partners as separate categories requiring two or more board members for each program, except for the special treatment given to rehabilitation programs.

§ 661.200(b) requires that the Governor appoint two or more members from each of the required categories of state board membership. In addition, the Preamble (p. 18665), indicates that a program operated by a state agency for the blind should be considered a separate program for purposes of appointing state board members. It seems to require at least two representatives of programs serving individuals with disabilities. In a state in which a different state agency is responsible for each required one-stop partner, the state board would have a minimum of 53 members.

The Department used similar reasoning in interpreting WIA § 117 requirements for local board membership. Requirements in § 661.315 lead to large, unwieldy local boards. Though Texas has named alternate entities as the state and local boards, the Commission encourages the Department to reconsider its interpretation. Creating overly large boards in the name of “representation” often leads to ineffective boards that are plagued by quorum and logistical issues (limited facilities that can accommodate the group and public), not to mention diminishing the strength of the private sector representatives. Recruitment of private sector members that are major employers becomes difficult and often, the “expertise” of stakeholder partners intimidates employers who often are unfamiliar with program jargon.

CHIEF ELECTED OFFICIALS AS LOCAL BOARD MEMBERS

§ 663.100 provides that the local CEOs are required one-stop partners since they are the grant recipients of WIA funds. WIA § 121(b) provides that the required one-stop partners are the entities which carry out the programs listed in that section. Among the programs listed are the programs authorized by Title I of WIA. § 662.200(a) provides that the "entity" which carries out a program and serves as a one-stop partner is the grant recipient, administrative entity or organization responsible for administering funds for the program in the local area.

§ 662.200(a) would seem to indicate that the one-stop partner representing the WIA programs could be the local board. § 663.100 requires the CEOs be the representatives of the WIA program. The regulation even refers to CEOs in the plural rather than referring to a single representative CEO. WIA § 117(b)(2)(A)(vi) requires that representatives of each of the one-stop partners be members of the local boards, making the CEOs members of the local boards.

The local workforce development boards acting as alternate entities in Texas do not require that one-stop members be board members. In that Texas will continue to use alternate entities, it will not need to meet the requirement that CEOs serve on the local boards. However, since CEOs are required partners, the local boards will need to enter into MOUs with the CEOs.

It is recommended that the Department rethink this regulation. It would seem that the local boards, as administrators of the WIA programs, are the entities in the best position to bear the responsibility for meeting the one-stop service requirements. Since the CEOs review and sign the local plan, the requirements of an MOU seem to be more than adequately addressed in their role in that comprehensive document. Additionally, the local boards must have the agreement of the CEO to enter into all MOUs so are indirectly a party to each one.

ONE-STOP PARTNERS

1) Guidance on the One-stop system in the regulations addresses none of the issues that have plagued One-stop development. Texas' efforts to reform the workforce system have been repeatedly hampered by differing program years and related planning and funding cycles, and by the complexity of differing allocation formulas and requirements among federal programs. Texas, in preparing to implement WIA early, also learned as we brokered our state MOUs that partner programs are anxious to join the system because guidance from their federal administrative agency was not forthcoming. Federal level activities that support bringing partner programs into the One-stop environment willingly, would generate notable progress toward the development of the system and could be reflected in guidance on a Unified State Plan.

2) One-stop partners are required to make core services available through the one-stop centers. This is a sensible attempt to assure that participants have access to all useful services. However, § 662.220(a) provides that if there is no local administrative entity for a program, the state agency responsible for the program should be the partner at the local one-stop. This may lead to situations where a local board must convince a state agency to make available core services at a One-stop Center in an area not previously served by a particular program.

§ 662.220(b)(3) provides that while WIA national programs are required partner programs, if a particular national program, for example the WIA Indian and Native American program, is not present in a local area, the local board is not required to include the program in the One-stop delivery system. Instead, the local board must "take steps to ensure that customer groups" have access to such services through the One-stop delivery system. It is sensible to apply this same approach to other programs without a presence in a particular board area. The local board should not be required to include the program in its system, but instead to make sure that participants are informed of the program and provided access in another board area where the program is operated.

3) WIA § 134(c)(1)(D) provides that a one-stop system must provide "access" to programs and activities carried out by One-stop partners. The system must make the programs "accessible" at not less than one physical center in each local area. WIA § 134(d)(2), describing core services, states that WIA adult and dislocated worker funds are to be used to provide core services through the one-stop system. WIA § 121(b)(1) states that One-stop partners are to make available to participants, through the one-stop delivery system, the services described in WIA § 134(d)(2) that are applicable to the partner's program.

The rule combines all of those references and requires in § 662.250 that core services, including eligibility determinations, outreach, intake, and initial assessment if applicable, be made available at the One-stop center by the partner program. This goes beyond the statute and requires partners to provide intake and assessment for their programs at the One-stop center. Of course, the Commission is committed to continuous improvement in the operation of the One-stop/workforce centers. Still, it seems burdensome to require the partners to meet such a requirement the first year of implementation. The Commission suggests that the term found in the Act describing service provision through the One-stop system be utilized in the Rule.

ONE-STOP: "PROPORTIONATE" RESPONSIBILITIES

§ 662.250(c) also includes a statement that "the responsibility of the partner for the provision of core services must be proportionate to the use of the services at the Comprehensive One-Stop Center by the individuals attributable to the partner's program." This requirement seems to go beyond the statute, is open to a number of interpretations and mandates a provision in the MOU that is not mentioned in the statute.

MEMORANDUM OF UNDERSTANDING

§ 662.310(c) provides that if a local board fails to execute an MOU with all of the required partners, it is not eligible for state incentive funds. The Commission suggests that the Department consider providing for an exception to this rule where a local board demonstrates good faith attempts to enter into all required MOUs, including requesting the assistance of the state and federal agencies as described in § 662.310(b), and is unsuccessful in obtaining the cooperation of a required partner program.

REGISTRATION AND UNIVERSAL ACCESS

§ 663.105(b) provides that adults and dislocated workers who receive services funded under WIA Title I, other than self-service or informational activities, must be registered and determined eligible. To the extent that core services 1) are paid for with WIA funds, and 2) exceed eligibility determination, self-service and informational activities, such services would only be available to individuals found eligible for WIA. This contradicts the intent of WIA 134(d)(2), which states that adults should have access to Core Services in One-stop Centers without regard to eligibility.

PELL GRANTS

§ 663.320 implements WIA § 134(d)(4)(B) which provides that funds for training services be limited to (1) individuals unable to obtain other grant assistance "including Federal Pell Grants" or (2) individuals who require assistance beyond that made available under other grants programs "including Federal Pell Grants." However, 20 USCA § 1087uu provides, "(n)otwithstanding another provision of law, student financial assistance received under this subchapter ... shall not be taken into account in defining need or eligibility ... for benefits or assistance or the amount of such benefits or assistance, under any ... program financed in whole or in part with Federal funds."

The WIA was enacted in 1998. The last amendment to 20 USCA § 1087uu occurred in 1992. The Department was instructed in WIA § 199A(a) to prepare and recommend legislation containing technical and conforming amendments to reflect the changes made by WIA. Although some technical amendments were made in October 1998, no amendment has been made to either WIA § 134(d)(4)(B) or 20 USCA § 1087uu to remove this apparent conflict.

§663.320(c) "A WIA participant may enroll in WIA-funded training while his/her application for a Pell Grant is pending as long as the One-Stop operator has made arrangements with the training provider and the WIA participant regarding allocation of the Pell Grant, if it is subsequently awarded. In that case, the training provider must reimburse the One-Stop operator the WIA funds used to underwrite the training for the amount the Pell Grant covers. Reimbursement is not required from the portion of the Pell Grant assistance disbursed to the WIA participant for education-related expenses." (WIA section 134(d)(4)(B).)

The Preamble states that, "Since Pell Grants are intended to provide for both tuition and other education-related costs, the Rule also clarifies that only the portion provided for tuition is subject to reimbursement." For clarity, we suggest that it be stated that 'the training provider must reimburse the tuition portion of a Pell Grant to the One-Stop operator.' Also, do tuition costs include or exclude specifically required fees for courses, such as lab fees, supply fees, and such?

TRAINING PROVIDER CERTIFICATION SYSTEM AND THE EDUCATION COMMUNITY'S CONFIDENTIALITY REQUIREMENTS

Development of the Training Provider Certification System and the State Rule on the system allowed unprecedented coordination with the education community. In this collaborative process, the federal requirements for confidentiality of student records has been identified as a major issue for receiving the necessary performance data (on students not funded with ITAs) for certifying training provider programs. Regulatory or Technical Assistance from the federal level is necessary to create and maintain the integrity of this system.

WAGNER-PEYSER BASIC LABOR EXCHANGE SERVICES

Preamble, Page 18669, Subpart B – One-stop Partners, Availability of Services - The WIA system, which provides for availability of core services by partner programs within the workforce center "One-stop" environment, presents an opportunity to further develop integration of services, to eliminate programmatic distinctions, to enhance customer choice, to increase provider accountability, and most of all, to help more Texans find jobs. The language in the Preamble and at §662.250(a) that distinguishes basic labor exchange services as the exclusive arena of the Wagner-Peyser Act partner program undermines the local authority and ability to develop functional core service delivery at local centers.

The Act lists the core services that are to be made available by all partner programs – if Congress had not expected all programs to contribute to the provision of core services, why is the list comprehensive of all "duplicative" services provided by the different programs. We believe that Congress intended maximizing the resources for such services and maximizing the effectiveness of the services by bringing them all together. The Department's interpretation that Wagner-Peyser should bear all the responsibility for basic labor exchange services is contradictory to the Act.

Prior to passage of WIA service to the universal population was only an Employment Service (ES) opportunity. While ES funded staff continue to be charged with the provision of the basic labor exchange services, it is appropriate and proper for other program partners to provide core services that are similar or even identical to ES. Functional flexibility is the only way to realize the benefits of a one-stop environment.

DISLOCATED WORKER ACTIVITIES, TAA AND NAFTA-TAA

Development of the Regulations for WIA provides an opportunity to align these three dislocated worker programs for the benefit of clients.

§663.115 should specifically allow for workers determined eligible under TAA or NAFTA-TAA to be automatically eligible for WIA dislocated worker activities. In addition, unemployment insurance claimants identified through the Worker Profiling Re-employment Service should be automatically eligible for WIA dislocated worker activities. To benefit affected dislocated workers and to eliminate intake redundancy, language providing for reciprocal eligibility should be added to §663.115.

§663.825 states the requirements for dislocated workers to receive needs-related payments. WIA requires that a dislocated worker be enrolled in a program of training services by the end of the 13th week….; this is problematic for TAA and NAFTA-TAA dislocated workers who are required to be in training 210 days and 16 weeks after lay-off respectively. These programs often work in conjunction to provide the complete assistance package needed to secure a new occupation for workers experiencing stressful conditions, therefore, where ever possible requirements should be aligned to minimize program barriers to their success.

Under NRPs at §663.825 and National Emergency Grants, references are made to "Trade Adjustment Assistance." The context seems to indicate the reference is to the income support under the Trade Act (both TAA and NAFTA-TAA). The reference should be to "Trade Readjustment Allowances (TRAs)," if indeed it is a reference to the income support that is in addition to the training, job search, and relocation assistance.

TAA and NAFTA-TAA are required one-stop partners, but the Interim Rule simply specifies coordination. Boards are under no obligation to co-enroll these dislocated workers. On the other hand, the TAA and the NAFTA amendments require JTPA/WIA benefits for trade-affected workers otherwise not eligible for trade benefits. WIA, §321, amends TAA and WIA, §112(B)(7)(v) requires specification of activities.

PERFORMANCE MEASURES

Without detailed definitions for the fifteen core indicators including the two customer satisfaction measures, the Interim Rule contributes little to the development of the performance measures accountability system. The lack of definitions is particularly problematic for early implementation states like Texas.

The continuous improvement requirements, strategy and operational approach are poorly defined. The continuous improvement requirement Texas experienced in the negotiation process was unclear and the Interim Rule provides no additional clarification. The requirement that programs continue to improve by increasing performance rates for the WIA measures indefinitely without increases in resources is unrealistic and could prove counterproductive.

The Act and the Interim Final Rule require that Unemployment Insurance (UI) wage data be used to measure performance. And although UI wage data is an invaluable data source for performance measurement, it is characterized by serious problems including uncovered employment, out-of-state employment, inaccurate or incomplete reporting and most problematic for performance management, severe time lag issues. The number of significant differences among states concerning UI wage coverage and reporting also makes comparison difficult and misleading.

The Commission recommends the Department formalize a federal and state collaborative process to address the multiple, complex performance issues.

GRIEVANCE PROCEDURES

§667.600(b) states that "Local area procedures must provide: (1) a process for dealing with grievances and complaints from participants and other interested parties affected by the Workforce Investment System, including one-stop partners and service providers…"

When referring to “local area,” the implication is that the local board is responsible for providing grievance and complaint procedures for the system and for each of the one-stop

partners and service providers. If so, it should be stated that it is the board's responsibility (local area is a geographic term that does not identify an entity to provide for the procedures) and provision for contributions for the costs of such to be negotiated with each partner in the Memoranda of Understanding.

§ 667.600 adds a requirement that a grievant must be offered an opportunity for informal resolution of a complaint. This is not required by WIA § 181(c) but does mirror the requirements of JTPA. The regulation requires that each local area, state, and direct recipient of funds establish and maintain a grievance procedure.

667.600(b)(1) states that local procedures must provide a "process for dealing with grievances and complaints from participants and other interested parties affected by the local Workforce System, including one-stop partners and service providers." The language of the regulation does not make it clear whether the phrase "including the one-stop partners and service providers" modifies the term "local Workforce Investment System" or the term "other interested parties."

The Preamble makes it clear, on page 18681, that the procedures are intended to address complaints made by One-stop partners and service providers and not complaints made against One-stop partners and service providers, but the language of the regulation itself is not clear. The Commission recommends that the Department rewrite this section of the rule to clearly establish responsibilities.

§ 667.600(c)(2) provides that the state must develop a process for resolving appeals of local area grievance decisions. Under JTPA, the state-level resolution of local appeals was limited to a review of the procedure used by the local program with a remand if the local board did not use proper procedures. Please be clear on the state's responsibility regarding grievance decisions.

ADMINISTRATIVE COSTS VS. PROGRAM COSTS

§ 667.210, which addresses the administrative cost limits as they apply to the WIA Title I grants, should provide a clear definition of Administrative Costs. The Commission recommends that the definition simply identify the local board's planning, reporting, contracting, evaluating and oversight functions as administrative costs and identifies all costs associated with the delivery of services and programs as program costs.

COST ALLOCATION

The preamble of the regulations states that "there are a number of methods that may be used for allocating costs among partners that are consistent with this principle and the OMB Circulars." However, the OMB Circulars related to cost principles and allocation of funds based on benefit to the program continue to be the most significant barrier to one-stop service delivery. Texas suggests that a new OMB Circular relevant to the present philosophical and legislative approach to integrated service delivery with the customer as the focus be developed. At a minimum, we further recommend that the

Department consult with other affected Federal agencies, and jointly issue guidance or technical assistance relating to cost allocation methods to assist in this area.

REALLOCATION OF FUNDS

§ 667.160(b) (see Preamble, page 18679) expands the WIA references to reallocation of local funds to provide that in calculating the amount available for recapture, the state should not consider the amount reserved, up to 10%, by the local program for costs of administration. It seems that this allows Board A to reserve the full 10% of its allocation for administrative costs, have 30% of its total funding reallocated for low expenditures, and still end up with 10% of the original allocation for the administrative costs. The amounts reallocated would be training dollars with no accompanying administrative funds. The Commission recommends that any funds subject to deobligation and reobligation be considered whole dollars, inclusive of both administration and training. See § 667.210(a)(2) regarding 10% limitation on administrative costs.

THE DEPARTMENT REVIEW OF RESPONSIBILITY

§ 667.170(a) provides that an organization will not be eligible to be a Department grantee if the organization's efforts to recover debts established by final agency action have been unsuccessful, or if there has been a failure to comply with an approved repayment plan. It is not clear what entity is meant by "agency," who owes the debt, to whom the debt is to be repaid, who is sending the demand letters, or what parties are involved in the repayment plan.

SANCTIONS

§ 667.269 provides that the Secretary review and take action on violations of the listed provisions. Please be clear on the state’s responsibility regarding these provisions.

SECTARIAN ACTIVITIES

Texas is a strong proponent of allowing faith-based organizations to participate actively in delivering the full range of workforce development activities, including supportive services, and believes these groups have provided a tremendous impact on the lives of many Texans. The Commission acknowledges that participants are not to be employed or trained in sectarian activities.

REPORTING REQUIREMENTS

WIA § 136(g)(1)(B) provides that if a state fails to submit a report regarding meeting performance measures, the Secretary may reduce the state's grant by up to 5%. § 667.300(e)(1) expands the penalty by providing that if the report is not filed within 45 days of the due date, the grant may be reduced. The Commission feels that 45 days is not an appropriate definition of “fails to submit” since the penalty could be so severe. A graduated notice process that begins at 45 days would be more realistic.

BURDEN OF PRODUCTION

20 C.F.R. § 667.810(e) provides that the Grant Officer will have the burden of production in an administrative appeal. The regulation states that the Grant Officer will have met this burden by the preparation and filing of the administrative record. This standard is much less than the usual requirement for the presentation of at least a prima facie case in order to meet the burden of production. Under this regulation, even if the Grant Officer does not allege facts sufficient to establish his case, the burden of persuasion shifts to the complainant.

The Commission offers the following item as an issue requiring a legislative technical correction that would be useful for WIA implementation:

WIA ELIGIBILITY: NATIONAL SCHOOL LUNCH PROGRAM

The Department of Labor is instructed, under WIA § 199A(a) to prepare and recommend legislation containing technical and conforming amendments to reflect the changes made by WIA. Although some technical amendments were made as the result of WIA in October 1998, there have not been any amendments to include income eligibility based on the National School Lunch program. Presently, WIA does not permit this. We recommend that the Department consider this issue as a legislative technical correction.

ATTACHMENT 2

Non-legislative barriers, circumstances or federal requirements that Impede states and localities from effective, innovative implementation of the WIA.

#1 – The OMB Circulars related to cost principles and allocation of funds based on benefit to the program continue to be the most significant barrier to one-stop service delivery. Suggested solution: A new OMB Circular relevant to the present philosophical and legislative approach to integrated service delivery with the customer as the focus.

#2. – The differing definitions and terms relating to performance measurement and reporting compound miscommunication problems among partner programs. Suggested solution: A common lexicon of definitions for performance measurement terms across federal programs related to workforce development.

#3 – Differing definitions of Administrative Costs (e.g., between DOL for WIA and HHS for TANF) is problematic. Suggested solution: A common definition and explanation of administrative costs across all federal programs related to workforce development.

#4 – The differing interpretations surrounding confidentiality issues make it expensive and problematic to negotiate agreements for data sharing – this has been an issue across federal programs for years. Suggested solution: Once and for all develop and issue federal guidelines on data sharing OR remove all performance, reporting, eligibility or other requirements that assume availability of data from any outside entity.

#5 – Many partners, including those funded by DOL/VETS, determined that they have no legislative mandate to actively and financially participate as a partner in the new workforce investment system. Suggested solution: One part of the solution goes back to #1 and establishing realistic cost allocation procedures, and the second part of the solution is commitment and communication from each federal funding agency to state and local program administrative organizations and contractors for full partnership in the new system. (For example, the DOE Memorandum from Patricia McNeil to the Vocational Education community.)

#6 – WIA provides for a different program design and service strategies, yet "effective and innovative implementation" is not promoted by establishing performance goals based on the JTPA system. Suggested solution: Bona fide performance <u>negotiation</u> wherein states provide valid data from <u>any</u> appropriate source to support their proposed goals and DOL counter proposals are based on additional data or analysis of data provided by the state.

#7 – This may be considered a "legislative" barrier, still it seems that it could be handled in a "non-legislative" fashion. The complicated amalgam of funding years, program years, fiscal years, etc. stymies comprehensive planning. Suggested solution: A single program start date for federal programs related to workforce development.

ATTACHMENT 3

Congressional Record
Workforce Investment Act of 1998
Senate – July 31, 1998

Mrs. HUTCHISON. Mr. President, I wish to engage my colleague, Senator **DeWINE**, in a colloquy. I thank Senator **Jeffords**, and the other members of the Senate Committee on Labor and Human Resources for your collective efforts in passing H.R. 1385, the Workforce Investment Act of 1998. This bill promises to improve and revitalize our country's workforce system and will enhance the effectiveness and efficiency of our federal job training programs.

As you know, Texas has been in the forefront of the remaking its state and local workforce delivery system. Beginning in 1993, Texas created a system very similar to one embodied in HR 1385. As with this federal legislation, the new Texas system is based on the principles of local control, customer service, and consolidation.

In this regard, I commend you for recognizing in the bill the uniqueness and foresight of the Texas workforce system by providing flexibility in the bill for our state to fully implement its new laws.

Specifically, I understand that HR 1385 provides that Texas will be able to maintain use of its Human Resource Investment Council (known as the Texas Council for Workforce and Economic Competitiveness) as defined in Texas statute and regulation to fulfill the State Board requirements under Section 111. In addition, Section 117(I) provides that Texas will be able to maintain the Local Workforce Development Boards as defined in Texas statute and regulation to fulfill the Local Board requirements under Section 117. Section 189(I)(2) provides that Texas may maintain the current local workforce board areas as defined in Texas statute and regulation to fulfill the requirements under section 116, and that no other language in HR 1385 may be construed to force Texas to change the configuration of its 28 local workforce areas. Section 189(I)(3) provides that Texas may maintain its sanctioning process for local boards. Section 194(a)(1)(A) provides that Texas may maintain it current process and formulas for allocating funds under sections 127 and 132 to its local workforce boards and that Texas may maintain it current procedures for disbursing money that is allocated to local workforce boards. Section 194(a)(1)(B) provides that local workforce boards in Texas may maintain their disbursal processes and procedures for monies provided under sections 127 and 132. Section 194(a)(2) provides that Texas may maintain the procedure as defined in Texas statute and regulation through which fiscal agents are designated by local boards for monies provided under sections 127 or 132. Section 194(a)(3) provides that Texas may maintain its process by which local boards designate or select one-stop partners and one-stop operators, notwithstanding any requirement set forth in section 121. Section 194(a)(4) provides that Texas may maintain its requirements that service providers shall not be permitted to perform both intake and training services. Section 194(a)(5) provides that

Texas may maintain the roles and functions of its state board (otherwise known as the Texas Council for Workforce and Economic Competitiveness) and that no requirements for elements of state plans shall be construed to force a role or function upon Texas' State Board that is inconsistent with Texas statute or regulation. Section 194(a)(6) provides that Texas may maintain the roles and functions of its Local Boards and that no requirements for elements of state or local plans shall be construed to force a role or function upon Texas' local board that is inconsistent with Texas statute or regulation.

Mr. **DeWINE**. The Senator is correct, and I, too, share your commitment to preserving the leading edge reforms Texas is implementing.

Mrs. HUTCHISON. I thank the Senator. There is, however, one final item on which I request clarification. It is my understanding that the intent of Section 194(a)(4) is to allow Texas to limit providers to provide either intake or training services as defined under section 134.

Mr. **DeWINE**. The Senator is correct. It was the intent of the Conference Committee to allow Texas this specific flexibility with regard to intake and training providers.

Mrs. HUTCHISON. I thank the Senator for his leadership and his assistance and cooperation in ensuring that the intent of this important bill is allowed to be carried-out according to specific state needs and laws.