**Workforce Innovation Fund: Examining Administrative Flexibility**

January 4th, 2012

Transcript

**Brian Keating**: Now without any further ado, I’m going to go ahead and turn things over to Gerri Fiala to go ahead and kick us off today. Gerri, take it away!

**Gerri Fiala**: Hello and welcome to this webinar on the topic of administrative flexibility as part of the Workforce Innovation Fund grant solicitation technical assistance series. I am Gerri Fiala, Deputy Assistant Secretary for the Department of Labor’s Employment and Training Administration. The purpose of this webinar is to:

* Review the administrative flexibility language in the Workforce Innovation Fund grant solicitation.
* Discuss the flexibilities offered through the Federal programs we anticipate most likely to be included in your grant proposal.
* Examine practical examples of administrative flexibility in action; and
* Provide you with an opportunity to ask questions you may have about administrative flexibility.

We are very pleased that a number of our partner agencies will present. Joining us are:

* **Brenda Dann-Messier**, Assistant Secretary for the Department of Education’s Office of Vocational and Adult Education
* **Lynnae Ruttledge**, Commissioner of Rehabilitation Services at the Department of Education
* **Earl Johnson**, Director of the Office of Family Assistance at Health and Human Service’s Administration for Children and Families
* **Victoria Collin** from the Office of Federal Financial Management, Office of Management and Budget. And
* **Judi Fisher**, Chief of the Division of Policy, Review, and Resolution here in the Employment and Training Administration

I’d like to thank our Federal partners for participating in this webinar; we greatly appreciate their partnership in the Workforce Innovation Fund grant solicitation.

The Workforce Innovation Fund is a vehicle intended to increase innovative service delivery with the ultimate goals of providing better customer outcomes at a lower cost to the public workforce system. In support of these goals, the solicitation highlights how applicants may explore the use of existing flexibilities that are embedded within several Federal programs and may explore waivers that may be needed to remove statutory and regulatory barriers that would enhance innovations applicants propose. While administrative flexibility is central to the WIF, the solicitation itself does not expand the existing statutory waiver authorities of Federal programs.

If, during the development of your innovation strategies, you or your partners identify impediments in current laws and regulations, or Office of Management and Budget (OMB) cost circulars, we encourage you to submit an attachment to the technical proposal of your application describing needed flexibilities or formally submitting a waiver request following the guidelines of each respective agency. The required information that you should include in your attachment is unique to each Federal agency program. We will review the individual requirements for each Federal program separately in a few moments.

While applicants should be thinking of how administrative flexibility could enhance their proposals, requests for waivers and/or special rules will be evaluated on a case by case basis. You should construct your technical proposal based on outcomes and deliverables you can achieve without waivers, or, with waivers you have currently, and then describe in the attachment the additional outcomes and deliverables you could achieve with new waivers. The waiver content in your attachment will not be considered as part of the application scoring process described in Section V.C. of the solicitation.

Please know that you are not required to submit a formal waiver request with your attachment, but you may. Any formal waiver requests received as part of the attachment will be officially processed and reviewed upon grant award. Applicants that submit only a description of the desired flexibility will need to submit formal waiver requests according to the established approval process for the relevant federal program.

Moving forward, we will discuss the available administrative flexibility for each Federal program and how to request a waiver, if needed. Attachment B of the solicitation provides information on administrative flexibility for specific programs. Let’s begin with WIA Title I, which is administered by ETA.

Whether your project may benefit from a waiver or not may depend on what other funding sources you may be leveraging along with the Innovation Fund dollars. The solicitation’s rules will apply for the funds awarded through the grant, however where you may be leveraging other WIA formula dollars you may find your innovation would be enhanced by obtaining some additional flexibility that may be available via the WIA, Title I waiver authority.

Section 189 of the Workforce Investment Act provides the Secretary of Labor the authority to waive certain provisions of the law or regulations that impede reform. ETA has approved many waivers requested by state grantees, some on behalf of local workforce areas, during the past decade to remove barriers, encourage innovation in support the agency’s national strategic direction, priority initiatives, and core functions. Under the waiver authority, States are granted increased flexibility in exchange for accountability for results, including improved programmatic outcomes.

Under the general waiver authority, the Secretary may waive any of the statutory or regulatory requirements of WIA title I, subtitles B and E, with certain exceptions, as indicated on the slide.

Requirements that cannot be waived include allocation of funds to local areas, eligibility provisions for both participants and training providers, provisions related to local areas and local boards, and review and approval of plans. The Secretary may also waive certain requirements of Sections 8 through 10 of the Wagner-Peyser Act.

As defined by WIA statue, only states may submit waiver requests. Local areas or other eligible applicants interested in pursuing a waiver must work through the appropriate state agency.

Now let’s discuss a few examples of previously approved WIA Title I waivers and how they have been used.

One category of waivers we have approved are those that allow more flexibility with what a state or local area can do with the funding streams and allowable uses of those funds. A waiver that many states have is one that allows them to permit local areas to transfer funds between the Adult and Dislocated Worker funding streams above the statutory limit up to 50%, which may enable an area to respond better to fluctuations in the populations they serve. Also, to encourage greater small business participation in customized training and On the Job Training, ETA has granted a number of states waivers that allow a sliding scale based on employer size to be used for the employer cost of utilizing those training strategies rather than the 50% requirement in the law.

We have also granted waivers to increase flexibility in Youth programs, such as allowing some states to forgo competitive procurement of certain youth program elements if services can be provided more effectively and efficiently through the One Stop Center.

We also have granted waivers related to performance. While ETA does not waive performance measures, we have allowed some flexibility in this area. In recent years, ETA and the Department of Health and Human Services encouraged the TANF and WIA systems to coordinate in order to use TANF Emergency Contingency funds provided under the Recovery Act to operate summer youth programs. To support this effort, ETA approved waiver requests to allow states to use the work readiness indicator as the only indicator of performance for youth co-enrolled in summer employment programs where wages were supported with TANF funds and participants engaged only in work experience were co-enrolled in WIA for wrap-around services. This flexibility allowed States and local areas to design a summer program that focused on work readiness and work experience without negatively impacting its performance.

I encourage you to explore the flexibilities available in WIA title I and the Wagner-Peyser Act, as a way to strengthen and enhance your project’s innovation. Information on the wide variety of waivers previously approved, as well as the waiver request process, is available online at [www.doleta.gov/waivers](http://www.doleta.gov/waivers)

I would now like to introduce our next presenter, Brenda Dann-Messier, Assistant Secretary from the Department of Education, Office of Vocational and Adult Education.

**Brenda Dann-Messier**: Thank you, Gerri. Today, I would like to discuss the Adult Education and Family Literacy Act, WIA Title II, waiver authority and existing administrative flexibilities.

The Adult Education and Family Literacy Act, or AEFLA, supports adult education services or instruction below the postsecondary level for individuals defined as eligible under the law.

AEFLA does not allow the Secretary of Education authority to grant waivers to states, except in waivers related to Maintenance of Effort.

Section 241 of WIA allows the Secretary to waive the requirements of the MOE for one fiscal year, if the Secretary determines that a waiver would be equitable due to exceptional or uncontrollable circumstances.

Examples of this would be a natural disaster or an unforeseen and precipitous decline in the financial resources of the State or outlying area of the eligible agency.

The eligible agency must submit a written request to the Department of Education that includes an explanation for the request. If your state is considering applying for a waiver, contact your area coordinator to discuss this provision in relation to your state’s specific situation.

While waivers are unallowable in instances other than MOE, the Department does encourage states to utilize existing flexibilities already in place within Title II to provide more effective services to Adult Education participants.

These flexibilities are aimed at eliminating fragmentation and promoting program alignment within the public workforce system; encouraging co-enrollment with Title I and other WIA partner programs, where possible and appropriate; and supporting integration of education and training.

For example, last year, the Department of Education issued a program memorandum on how funding under AEFLA, in combination with other funding sources, may be used to support Integrated Education and Training (IET) programs to design career pathways models. IET combines occupational skills training with adult education services to increase the educational and career advancement of participants. For more information, a link to the guidance is provided.

There are existing administrative flexibilities already in place, such as AEFLA state leadership activities funds, that provide greater flexibility to states in promoting linkages to adult education and literacy activities.

Section 223 (a)(8) of AEFLA allows state leadership funds to be used to conduct activities of statewide significance that promote the purpose of AEFLA. Several other permissive state leadership fund activities under Section 223 include, but are not limited to:

* + Professional development to improve instructional quality;
  + Monitoring and evaluation of the quality and improvement of adult education and literacy services;
  + Incentives for program coordination and integration;
  + Coordination with existing support services, such as transportation, child care, and other assistance designed to increase rates of enrollment in, and successful completion of, adult education and literacy activities, to adults enrolled in such activities;
  + Integration of literacy instruction and occupational skill training, and promoting linkages with employers; and
  + Linkages with postsecondary educational institutions.
  + Section 223(b) also emphasizes collaboration with eligible agencies, where possible, to avoid duplication of efforts and to maximize the impact of activities.

We encourage applicants to explore these flexibilities to maximize the impact their proposal can have on outcomes.

**Gerri Fiala:** Thank you, Brenda. We appreciate your discussion of the flexibility available in Adult Education funds.

Our next presenter is Lynnae Ruttledge, Rehabilitation Services Administration Commissioner at the Department of Education. She will discuss administrative flexibility in the Vocational Rehabilitation Programs.

**Lynnae Ruttledge:** Good afternoon, everyone.

My name is Lynnae Ruttledge, and I have the honor to be the Commissioner of the Rehabilitation Services Administration, a part of the Office of Special Education and Rehabilitative Services in the Department of Education.

The Rehabilitation Services Administration and the public Vocational Rehabilitation program, commonly called the VR program, have a strong commitment to promoting cross-program collaboration to leverage scarce resources and build capacity to achieve better employment outcomes for individuals with significant disabilities.

Title I of the Rehabilitation Act of 1998, as amended, funds a public VR program that is delivered through formula grants to states. These grants fund 80 State Vocational Rehabilitation agencies. The main purpose of these State VR agencies is to assist individuals with disabilities achieve competitive employment outcomes in the community.

The Rehabilitation Act gives the public VR program great flexibility to partner with others to achieve employment outcomes for individuals with disabilities.

State VR agencies are doing this successfully across the country through co-enrollment in workforce programs, schools and veterans programs; by jointly participating with education for new approaches like Project SEARCH; and through partnerships with a wide range of disability organizations and community partners and employers.

The best part is that we need no waiver authority to do it.

In addition to the considerable ability to work with community partners, the VR program has broad flexibility with regard to services that can be provided to eligible individuals with disabilities.  VR services are individualized to meet the needs of the individual with regard to choice of vocational objective, choice of services, and choice of service provider.  The state VR agency can provide almost any service that is necessary to reach the employment outcome that is agreed upon in the IPE, the Individual Plan for Employment.  This flexibility may be modified by state policies regarding individual financial participation and the existence of comparable benefits from other programs or sources, but for the individual with a disability the VR program has great flexibility.

THE BEST PART IS THAT WE NEED NO WAIVER AUTHORITY TO USE THESE FLEXIBILITIES.

The Rehabilitation Act of 1998, the Rehab Act, as amended, does not allow the Secretary of Education or the Commissioner of the Rehabilitation Services Administration to grant waivers to states, except for waivers related to Maintenance of Effort (MOE), and waivers of requirements for statewideness of services.  There are no other waiver options authorized in the Rehab Act.

The Rehabilitation Act and its regulations allows the Secretary to waive the requirements of the MOE for one fiscal year, if the Secretary determines that a waiver would be equitable due to exceptional or uncontrollable circumstances, such as a natural disaster or an unforeseen and precipitous decline in the financial resources of the state or outlying area served by the eligible agency.

The overall intent of the Rehabilitation Act is that the vocational rehabilitation services described in the state plan must be provided in all political subdivisions of the state, unless a request has been made and approval given for a waiver of statewideness.

With a waiver of statewideness, the state VR agency may provide services in one or more political subdivisions of the state that increase or expand the services available statewide under the state plan.  This does not mean that the State VR agency can cease provision of services required under the state plan and replace them with different services. The waiver of statewideness does allow for the provision of additional services in some subdivisions of the state.

Waiver of statewideness requests are usually made as part of the VR State plan submission. A State VR agency waiver of statewideness request could be made as part of a unified plan submission, as part of the VR agency submission of the annual State plan attachments, or as part of a state plan modification. State VR agencies may modify the VR State plan at any time, and therefore may submit a State plan modification for the purposes of requesting approval of a waiver of statewideness at any time.

WE ENCOURAGE YOU TO USE THE FLEXIBILITY IN THE REHABILITATION ACT TO PARTNER WITH THE VR PROGRAM TO ASSIST INDIVIDUALS WITH DISABILITIES PREPARE FOR, OBTAIN, RETAIN, AND SUSTAIN HIGH QUALITY EMPLOYMENT.

**Gerri Fiala:** Thank you Commissioner Ruttledge. We greatly appreciate you sharing this information about flexibilities in the Vocational Rehabilitation program.

Next, I would like to introduce Earl Johnson, Director of the Office of Family Assistance at Health and Human Service’s Administration for Children and Families. Earl will discuss flexibility available in the TANF program.

**Earl Johnson:** Thank you. The TANF program provides extraordinary flexibility for funding a

wide variety of employment and training activities, supportive services, and benefits that will enable clients to get a job, keep a job, and improve their economic circumstances. As a general rule, States must use the available funds for eligible, needy families with a child and for one of the four purposes of the TANF program:

ｷ To provide assistance to needy families;

ｷ To end dependence of needy parents by promoting job preparation, work and marriage;

ｷ To prevent and reduce out-of-wedlock pregnancies; and

ｷ To encourage the formation and maintenance of two-parent families.

There are a variety of benefits and services that can be funded by TANF, only one of which is cash assistance. TANF funds can be used to provide benefits for families that are not receiving cash assistance, as long as they are needy.

States have a broad discretion in their definitions of needy. They may decide the income and resource standards that they will use to determine eligibility, and they may set different financial eligibility criteria for different benefits or services. (For example, they could limit eligibility for cash assistance to families living below poverty, but provide supportive services like child care, transportation, and other job retention and advancement services to working families up to 185% of poverty, or whatever financial limit they prefer.) By adopting these different standards, States may provide work supports to a broad range of low-income, working families.

To carry out one of the statutory purposes of the TANF program, States may contract for expansions of services in other federally funded programs, unless it would violate Congressional intent. Examples of possible expansions would be to contract with: Head Start centers for more full-day, full-year services or infant and toddler care; or adult education programs for additional ESL classes.

For families receiving cash assistance, work participation rules apply, and states must demonstrate that a certain portion of their caseload is engaged in countable work activities. Thus, while states are free to use the funds to provide activities that do not count toward the rates, states will often want to prioritize or limit funding for assistance recipients to activities that count toward the rates.

The following are examples of services that States may provide eligible recipients, with a focus on those that support recipients in achieving and retaining employment.

ｷ Provide job search, job placement, transportation, and child care services to TANF applicants

ｷ Provide work experience and case management to individuals with employment barriers, such as little or no work history

ｷ Subsidize wages directly or through an employer. Provide subsidies to help pay for the creation of community jobs for needy parents in private, non-profit or community agencies

ｷ Provide job retention services or post-employment follow-up services, such as counseling, employee assistance, or other supportive services

ｷ Help unemployed needy noncustodial parent by providing job skills training, re-training, job search, employment placement services, or other work-related services

ｷ Subcontract with business organizations or associations to expand participation of employers in welfare-to-work initiatives and encourage the hiring of TANF recipients

There are also a number of areas where TANF funds can be used to support Education and training activities. These include:

ｷ Share with employers the costs of on-site education, such as ESL or literacy classes

ｷ Provide classes for new, unskilled, and semi-skilled workers to teach new skills or enhance existing skills in order to improve their chances of job retention and advancement

ｷ Train employed recipients, former recipients, and noncustodial parents in job-related vocational and literacy skills needed for regular, full-time employment

ｷ Fund education or job training activities at colleges and secondary and technical schools that promote advancement to higher paying jobs and self-sufficiency

Additional resources that will give you more information about the uses of TANF funds include:

The TANF Funding Guide. It can be found at: <http://www.acf.hhs.gov/programs/ofa/resources/funding_guide.htm>

Or TANF Policy Questions and Answers. And that can be found at: <http://www.acf.hhs.gov/programs/ofa/polquest/index.htm>

Thank you for the opportunity to discuss the flexibility available in the TANF program to better support outcomes of projects funded by the Workforce Innovation Fund. Thank you.

**Gerri Fiala:** Thank you, Earl, for sharing that valuable information.

We now will hear from Victoria Collin with the Office of Management and Budget and then ETA’s own Judi Fisher to discuss OMB cost circular flexibility.

**Victoria Collin:** Thank you Gerri.  As many of you may know, in February 2011, President Obama issued a Presidential Memorandum on Administrative Flexibility instructing OMB and federal agencies to work with state and local governments to identify opportunities to increase administrative flexibility in federally funded programs to improve program performance, target waste, fraud, and abuse and more efficiently achieve the best results for their constituents.

In response to the memo, at the Office of Management and Budget, we have been working with both Federal and non-Federal stakeholders to explore how requirements in OMB’s own circulars governing grants management could better support grantees in their efforts to provide the most effective and efficient services to program participants. We recognize that some reporting requirements like time-and-effort, while well-intentioned as a justification for the costs of salaries and wages, may be overly burdensome and fail to provide important information on the services provided or the impacts achieved for participants.

We have the authority to waive the requirements in OMB’s circulars and are very interested in testing alternatives to the current requirements that still ensure the appropriate use of Federal funds. We look forward to hearing your ideas, and are excited about the opportunity to potentially test some of them under the Workforce Innovation Fund.

I will now turn back to ETA, for Judi Fischer to go into greater detail about the waiver opportunities related to the OMB circulars.

**Judi Fisher:** Thank you Victoria. As discussed, OMB has identified some flexibility in terms of time-and-effort requirements for Federal grantees including states and other eligible entities. I would like to take this time do go into a bit more detail on this flexibility.

Both 2 CFR Part 225 and 2 CFR Part 230 require verification that individuals whose salaries are supported by a Federal program are spending the appropriate amount of time carrying out the allowable activities of that program. For you financial managers, this is known as time and effort reporting which is an integral part of appropriate cost allocation. For example, case managers at One-Stop Career Centers may have to report the amount of time they spend each day serving clients under multiple funding streams. Though time-and-effort reporting is intended to ensure the proper allocation of Federal funds, the process may become overly burdensome, especially with multiple Federal funding sources. This type of reporting also does not provide information on the services given or, more importantly, the impact of those services on program participants.

Therefore, OMB will consider allowing ETA to waive the cost principles requirements at 2 CFR Part 225 and 2 CFR Part 230, Appendix B.8 for the WIF grant awardees, including those for Personnel Activity Reports for Innovation Fund grantees that come forward with alternative proposals that ensure the appropriate use of Federal funds.

Under this flexibility, grantees could provide certifications of time distribution on a semi-annual or other agreed up time basis, that are reasonably supported by data such as time sampling or numerical data based on case counts, performance outcomes, eligible clients among others. Grantees could also propose other methods of ensuring that Federal dollars are appropriately used to meet overarching program goals for example, by measuring outputs or outcomes such as employment placements associated with those Federal investments.

To apply for a waiver of these, and other OMB cost principles requirements, principles requirements, applicants should indicate their interest in an addendum to their application, provide information on the specific provisions of the applicable Cost Principles they want to be waived, describe what benefit will confer to the grant, and provide information on the proposed alternative methods they would use to ensure the appropriate use of Federal funds.

ETA will work with successful applicants to obtain the formal specific OMB approval of the waiver after grant award. If you have any questions, I’m sure we’ll be able to answer those moving forward.

**Gerri Fiala:** Thank you, Judi and to all our presenters. This is a lot of information to absorb, but we hope it will be helpful to you in exploring the options available for innovation.

This concludes our presentation on administrative flexibility. A special thanks again to all of our presenters. It is my sincere hope that each applicant will carefully consider how the various flexibilities we’ve discussed today might break down silos and foster innovation. Should you continue to have technical questions on this topic, please e-mail them to[**Ferro.Ariam@dol.gov**](mailto:Ferro.Ariam@dol.gov)**.**

We would now like to open up the webinar chat for your questions.

**Brian Keating**: Thanks, Gerri. I know that’s a lot of information. What we’re going to do now is spend some time addressing your questions. Now we have received a couple of questions so far but we’re going to be taking a chunk of time now to address any additional questions that you might have about all of that information that you just heard. So what we’re going to do is actually play some music.

Now, as you can see, we’ve switched over to a question and answer period here where you can actually continue to type in your questions at the bottom of that chat window that you see taking up the majority of your screen and we’ll go ahead and address them via text.

So, again, you’re going to be hearing some music. We’ll keep it low so you can think and talk amongst yourselves and address your questions in that chat window. But, stay with us and we will be addressing the questions that people have and we’ve already started to do that through that chat. Alright, so, give us a few minutes here while we address some of your questions. If you’re in a group, feel free to talk amongst yourselves and then type your questions into that chat window so we can look through it and address it as we can. All right, very good, we’ll come back in several minutes to address and wrap up the webinar, but for now we’ll give you some time to think about and type in your questions!

[Music Plays]

All right everybody. We appreciate everyone’s feedback. Thank you to those of you who are still on the phone. And we’re actually going to go ahead and close things out today but as you can see we’re going to go ahead and leave the webinar room open, and you can let us know if you have any additional questions that were not addressed today.

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We also have literally thousands of resources, many of which were contributed by you, the Workforce3One community.

On behalf of Workforce3 One and today’s presenters, I’d like to conclude today’s session by thanking you all for your time, and we look forward to seeing you on future webinars! Thank you.