

U.S. Department of Labor

Assistant Secretary for
Employment and Training
Washington, D.C. 20210



June 4, 2024

The Honorable Gavin Newsom
Governor of California
1315 10th Street
Suite 1173
Sacramento, CA 95814

Dear Governor Newsom:

Thank you for your waiver request submission to the U.S. Department of Labor regarding certain statutory and regulatory provisions of the Workforce Innovation and Opportunity Act (WIOA) and the accompanying plan to improve the statewide workforce development system (enclosed). The waiver requests were received March 11, 2024, as part of your recent WIOA State Plan submission. This letter provides the Employment and Training Administration's (ETA) official response to your request and memorializes that the State will meet the outcomes and implement the measures identified in its plan to ensure accountability agreed to by California and ETA. This action is taken under the Secretary of Labor's authority to waive certain requirements of WIOA Title I, Subtitles A, B, and E, and Sections 8–10 of the Wagner-Peyser Act in WIOA Section 189(i).

Requested Waiver: Waiver associated with the requirement at WIOA Section 129(a)(4)(A) and 20 CFR 681.410 that the State and local areas expend 75 percent of Governor's reserve youth funds and local formula youth funds on out-of-school youth (OSY).

ETA Response: ETA approves, for Program Year (PY) 2024 and PY 2025, which includes the entire time period for which states are authorized to spend those funds, the State's request to waive the requirement that the State expend 75 percent of Governor's reserve youth funds on OSY. ETA reviewed California's waiver request and plan and has determined that the requirements requested to be waived impede the ability of the State to implement its plan to improve the workforce development system. California may lower the expenditure requirement of Governor's reserve funds to 50 percent for OSY.

In addition, ETA approves for PY 2024 and PY 2025, which includes the entire time period for which states are authorized to spend those funds, the State's request to waive the requirement that local areas expend 75 percent of local youth formula funds on OSY. California may lower the local youth funds expenditure requirement to 50 percent for OSY. As a result of this waiver, ETA expects that the number of in-school youth (ISY) served will increase, and performance accountability outcomes for overall WIOA Youth (including both ISY and OSY) will remain steady or increase for the majority of the WIOA Youth performance indicators.

Requested Waiver: Waiver of WIOA Section 134(d)(5) and 20 CFR 680.195 to allow up to 30 percent of WIOA Title I Adult and Dislocated Worker local formula funds to be used for the provision of transitional jobs.

ETA Response: ETA approves the State’s waiver request through June 30, 2028, for the WIOA Title I Adult and Dislocated Worker formula funding streams. ETA reviewed California’s waiver request and plan and has determined that the requirements requested to be waived impede the ability of the State to implement its plan to improve the workforce development system. To accurately report participants in receipt of transitional jobs, California must record code value “6” in Participant Individual Record Layout (PIRL) element 1205 “Work Experience,” and code value “1” in PIRL element 1211.

Requested Waiver: The State is requesting a waiver of WIOA Section 134(c) (3)(H)(i) and 20 CFR 680.720(b) in order to increase on-the-job training (OJT) employer reimbursement up to 90 percent for businesses with 50 or fewer employees.

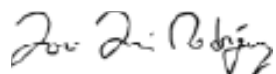
ETA Response: ETA approves the State’s waiver request through June 30, 2028, for the WIOA Title I Adult, Dislocated Worker, and Youth formula funds. ETA reviewed California’s waiver request and plan and has determined that the requirements requested to be waived impede the ability of the State to implement its plan to improve the workforce development system. Existing statutory authority permits the State and its local workforce areas to increase the reimbursement rate for OJT contracts up to 75 percent. The State may also reimburse up to 90 percent for OJT for businesses with 50 or fewer employees. ETA expects the utilization of OJT to increase in the State as a result of this waiver.

Requested Waiver: Waiver from the operational parameters in Training and Employment Guidance Letter (TEGL) 10-16, Change 2. This waiver would allow local areas the flexibility to include Adult and Dislocated Workers who attend training funded by a program not included in common exit in their Credential Attainment and Measurable Skill Gains indicators. Additionally, this waiver would allow the state to report these services and outcomes in the Participant Individual Record Layout (PIRL).

ETA Response: ETA does not approve this waiver because it is not necessary. It is not necessary to request a waiver from TEGL operational parameters. Rather, waivers change requirements in the WIOA statute. The guidance clarifies statute and provides promising practices to the workforce system. ETA will provide technical assistance to California to help maximize co-enrollment between WIOA core and partner programs in response to this request, including reporting outcomes for partner programs in the PIRL.

The State must report its waiver outcomes and implementation of the approved waiver in the WIOA Annual Report. ETA will use this information to assess continued waiver approval and to identify promising practices that may be adopted more widely. ETA is available to provide technical assistance to you in support of your goals. If you have questions, feel free to contact my office at (202) 693-2772.

Sincerely,



José Javier Rodríguez

Enclosure

cc: Nancy Farias, Director, California Employment Development Department
Dr. Tamika Ledbetter, Regional Administrator, ETA
Latha Seshadri, Federal Project Officer, ETA

California 2024 State Plan Waiver Request

Submitted March 13, 2024

Background

During the past State Plan cycle (PY 2020-23), ongoing disruptions as a result of the pandemic had a vast impact on the state's workforce and economy. At the 2022 Modification, certain sectors within California's labor market continued to experience devastating effects from unprecedented increases in both temporary and permanent layoffs, especially as supply chain disruptions and mutations of the COVID-19 virus threatened many businesses with permanent closure. In order to help Local Boards mitigate the increasing challenges associated with service delivery, California applied for and received DOL approval for three waivers, which provided Local Boards with critical flexibility when assisting individuals and businesses affected by the COVID-19 pandemic.

The job losses experienced in California during COVID-19, as well as the challenging post-pandemic economic conditions, pervaded the economy in every major industry sector. While the state has made major strides toward recovery and expansion, there is still work to be done in several industries that have yet to recover from their pandemic-induced losses and post-pandemic economic conditions.

The CWDB is uniquely staffed with researchers who have the necessary education and training to conduct an evaluation of the Local Boards' waiver usage, and plans for conducting this evaluation are underway. However, in order for this evaluation to be credible, we need to ensure that the study is "reliable." The concept of reliability deals with the quality of the measurement; for any measurement to be reliable, it must be consistent and repeatable. Additionally, the larger the sample size, the more reliable the results are because they have smaller margins of error. Therefore, additional time and data utilizing these waivers would increase the evaluation's reliability and allow California to better understand the impact that the waivers have on both Local Boards' service delivery and the participants receiving services.

In order to give California more time to fully evaluate the successfulness of each waiver, the CWDB and EDD are requesting DOL's approval to extend the following three WIOA waivers through the life of the current State Plan (PY 2024-27):

- Waiver of WIOA Section 134(d)(5): This waiver allows up to 30 percent of WIOA Title I adult and dislocated worker local formula funds to be used for the provision of transitional jobs.

- Waiver of WIOA Section 134(c)(3)(H)(i): This waiver allows up to a 90 percent reimbursement of on-the-job training (OJT) costs for businesses with 50 or fewer employees.
- Waiver of WIOA Section 129(a)(4)(A): This waiver allows Local Boards to decrease the out-of-school youth (OSY) expenditure requirement from 75 percent to 50 percent.

Additionally, the CWDB and EDD are requesting DOL's approval on the following WIOA waiver through the life of the current State Plan (PY 2024-27):

- Waiver from the operational parameters in Training and Employment Guidance Letter (TEGL) 10-16, Change 2: This waiver would allow Local Areas the flexibility to include Adult and Dislocated Workers who attend training funded by a program not included in common exit in their Credential Attainment and Measurable Skill Gains indicators. Additionally, this waiver would allow the state to report these services and outcomes in the Participant Individual Record Layout (ETA 9172).

Under WIOA Section 134(d)(5), a Local Board may use up to 10 percent of their combined WIOA Title I Adult and Dislocated Worker formula funds for the provision of transitional jobs. Extension of this waiver would continue to allow up to 30 percent of a Local Board's combined WIOA Title I adult and dislocated worker formula funds to be used for the provision of transitional jobs.

Given the diverse and varying needs in California, the state has allowed the manner and degree to which Local Boards use transitional jobs to remain a local decision based on the needs of the participants and employers in their community. However, when the pandemic hit, both Local Boards who were actively using the transitional jobs, as well as those who had not used it recently, voiced that they saw it becoming a critical service delivery strategy over the next couple of years as many participants, especially those with barriers to employment, are struggling to attach or re-attach to the labor market.

California's intent in seeking this waiver is not to replace, reduce, or impact existing employees in any way. Instead, the waiver would allow Local Boards increased flexibility to provide transitional jobs to individuals with barriers to employment to gain work experience and a source of income during these trying times. As a secondary benefit, the waiver could assist employers who may need or want to hire additional staff (on top of their existing staff) to rebuild their business operations but do not currently have the financial means to do so, given the decrease in revenue that many businesses experienced during the pandemic.

There are no state or local statutory or regulatory barriers to implementing the proposed waiver.

This waiver aligns with the following strategic goals outlined in the State Plan:

- Fostering demand-driven skills attainment

- Enabling upward mobility for all Californians
- Aligning, coordinating, and integrating programs and services

The State of California anticipates the implementation of this waiver to have the following programmatic outcomes:

- Provide participants who are chronically unemployed or have an inconsistent work history with work experience and reattachment to the labor market.
- Provide participants with wages that will assist in covering critical living expenses and provide stimulus to local economies.
- Provide a source of additional subsidized labor to employers working to rebuild their business operations due to the economic impact of the COVID-19 pandemic.

California placed 487 Adults and 29 Dislocated Workers in Transitional Jobs in PY 2022-23. While it can be hard to provide an exact number given the uncertain and ever-changing economic conditions, California anticipates that increasing the percentage of adult and dislocated funds that can be spent on transitional jobs to individuals with barriers to employment could lead to an estimated 10% increase in Adults and Dislocated Workers placed in transitional jobs for each full program year that the waiver is in effect.

The waiver is intended to assist both job seekers and employers. In particular, this waiver is meant to impact the following:

- Job seekers with significant barriers to employment who are either:
 - Chronically unemployed
 - Have an inconsistent work history
 - Employers attempting to hire additional staff to rebuild their business operations due to the economic impact of the COVID-19 pandemic.

As outlined in Workforce Services Directive WSD20-13, Local Boards must receive approval from the state before using any of the waivers granted by DOL. This application process allows the state to approve each individual waiver contingent on Local Boards meeting certain criteria and requirements related to that waiver. It also allows the state to track which Local Boards are using which waivers to determine their effectiveness at the end of each program year.

Because the current waiver was only applied to PY 2021-22, it is too early to determine the true impact without a complete program year of data to compare against. However, 6 Local Boards are currently approved to utilize this waiver, with more Local Boards indicating they would like to apply in future program years if the current waiver is extended.

The Draft State Plan was posted for public comment for 30 days to allow the workforce community to provide input.

Small businesses are continuing to experience unprecedented challenges due to the COVID-19 pandemic and ensuing economic conditions due to inflation, supply chain issues, and worker shortages. Unlike large corporations with deep pockets, small businesses operate with tight margins and have less room to absorb the shocks of an inflationary economy. Coupled with a red-hot job market where retaining employees poses significant challenges, competing with bigger companies that can offer higher salaries and better benefits is tough for small businesses on tight budgets.

Extension of this waiver would allow Local Boards to continue providing additional relief to small businesses who may be more risk-averse when hiring and training new employees during this economic instability by reimbursing a greater portion of their on-the-job training costs. This extension would also maximize Local Boards' ability to support small businesses that are seeking to maintain and retrain their workforce to adapt to the rapidly changing economic landscape.

There are no state or local statutory or regulatory barriers to implementing the proposed waiver.

This waiver aligns with the following strategic goals outlined in the State Plan:

- Fostering demand-driven skills attainment
- Enabling upward mobility for all Californians
- Aligning, coordinating, and integrating programs and services

The State of California anticipates the extension of this waiver to have the following programmatic outcomes:

- Provide small businesses with additional reimbursement of the OJT costs associated with training employees to meet existing or new business needs resulting from the economic impact of the COVID-19 pandemic.
- Provide job seekers with barriers to employment subsidized training opportunities to improve the prospect of obtaining and retaining employment.

California provided 1,172 Adults and 304 Dislocated Workers with OJT services in PY 2019-20. Consultation with Local Boards has revealed that approximately 75% of those were with small businesses that have 50 or fewer employees. While it can be hard to provide an exact number given the uncertain and ever-changing economic conditions, California anticipates that increasing the reimbursement up to 90% could lead to an estimated 25% increase or an additional 250 participants placed in OJTs with small businesses for each year that the waiver is in effect.

The waiver is intended to provide assistance to both job seekers and employers. In particular, this waiver is meant to impact the following:

- Employers with fewer than 50 employees, especially those who are experiencing altered operations, service delivery, or other changes due to the economic impact of COVID-19.
- Job seekers with barriers to employment, especially those whose employment status has been affected due to the economic impact of COVID-19.

As outlined in Workforce Services Directive WSD20-13, Local Boards must receive approval from the state before using any of the waivers granted by DOL. This application process allows the state to approve each individual waiver contingent on local boards meeting certain criteria and requirements related to that waiver. It also allows the state to track which Local Boards use waivers to determine their effectiveness at the end of each program year.

Because the current waiver was only applied to PY 2021-22, it is too early to determine the true impact without a complete program year of data to compare against. However, 13 Local Boards are currently approved to utilize this waiver, with more Local Boards indicating they would like to apply in future program years if the current waiver is extended.

The Draft State Plan was posted for public comment for 30 days to allow the workforce community to provide input.

Under WIOA, Local Boards are required to spend at least 75 percent of their WIOA youth formula allocation on youth workforce investment activities for OSY. For California, an unintended consequence of this requirement has led to a reduction in funds that Local Boards could redirect toward serving ISY who are involved in the foster care system, juvenile justice system, and/or experiencing homelessness.

In California, foster care and juvenile justice youth have high rates of not completing high school, entering post-secondary education, or entering the workforce. While this waiver increases the flexibility that Local Boards have to enroll all eligible ISY, California is specifically hoping to see an increase in access to services for systems involved youth and youth experiencing homelessness so that they can be served through workforce development programs to support their continued engagement in education or training prior to disengagement.

There are no state or local statutory or regulatory barriers to implementing the proposed waiver.

This waiver aligns with the following strategic goals outlined in the State Plan:

- Fostering demand-driven skills attainment.
- Enabling upward mobility for all Californians.
- Aligning, coordinating, and integrating programs and services.

While it can be hard to provide an exact number given the pandemic's impact on school reopening and the variance in how many disconnected youth are in each Local Area, the CWDB anticipates that Local Boards who applied for and are utilizing this waiver will see an increase of approximately 15 percent, in the total number of ISY that they enroll who meet the WIOA defined youth barriers related to foster care, justice-involved, and/or homelessness. Using California's Program Year 2019-20 data as a benchmark, a 15 percent increase would equate to approximately 695 more ISY youth from the identified target populations enrolled statewide for every full program year the waiver is in effect.

This waiver is intended to increase the enrollment of ISY who meet one or more of the following WIOA-defined ISY barriers:

- An offender.
- A homeless individual or runaway.
- An individual in foster care or who has aged out of the foster care system.

An individual who has attained 16 years of age and left foster care for kinship guardianship or adoption, a child eligible for assistance under Section 477 of the Social Security Act, or in an out-of-home placement.

As outlined in Workforce Services Information Notice WSIN21-12, Local Boards must receive approval from the state before using any of the waivers granted by DOL. This application process allows the state to make approvals for each individual waiver contingent on Local Boards meeting certain criteria and requirements related to that waiver. It also allows the state to track which Local Boards are using which waivers in order to determine their effectiveness at the end of each program year.

Because the current waiver was only applied to PY 2021-22, it is too early to determine the true impact without a complete program year of data to compare against. However, 17 Local Boards are currently approved to utilize this waiver, with more Local Boards indicating they would like to apply in future program years if an extension of the current waiver is received.

The Draft State Plan will be posted for public comment for 30 days in order to allow the workforce community an opportunity to provide input.

Waiver of TEGL 10-16, Change 2 Operational Parameter Related to Title I Adult and Dislocated Workers

All participants who are in a Title I Adult or Dislocated Worker-funded training program or receiving training from a DOL partner program that shares a common exit with a Title I Adult or Dislocated Worker are included in the credential attainment indicator. This waiver would allow Local Areas the flexibility to include participants in Adult or Dislocated Worker-funded training

programs or receive training from a DOL partner program that does not share a common exit with a Title I Adult or Dislocated Worker in their Credential Attainment and Measurable Skills Gains indicators. Additionally, this waiver would allow the state to report these services and outcomes in the Participant Individual Record Layout (ETA 9172).

There are no state or local statutory or regulatory barriers to implementing the proposed waiver.

California supports and encourages Local Areas to co-enroll across core and partner programs. This is emphasized in the State Plan, as well as in policy developed in partnership with the following California state departments: Department of Rehabilitation, Department of Education, Department of Social Services, and the California Community College's Chancellor Office (WSD19-09, *Strategic Co-enrollment – Unified Plan Partners*).

This waiver supports state policy by supporting the Local Area's collaboration with partners to provide a holistic service delivery model that incorporates both employment and education services. Local Areas can promote successful outcomes for program participants by leveraging other resources while continuing to provide employment and supportive services. For example, in California, the California College Promise Grant (CCPG) waives the enrollment fees of California Community College courses for low-income, eligible California residents. Under this waiver, training services (regardless of funding source) will place Adult and Dislocated Workers into the Credential Attainment and Measurable Skill Gains indicators, and outcomes associated with the program participant will count toward the Adult and Dislocated Worker programs. The state intends to capture the training and outcomes data in a manner that allows for the identification of participants in training programs funded by sources other than programs included in a common exit.

TEGL 4-15, *Vision for the One-Stop Delivery System under the Workforce Innovation and Opportunity Act (WIOA)* indicates, "Under WIOA, partner programs and entities that are jointly responsible for workforce and economic development, educational, and other human resource programs collaborate to create a seamless customer-focused one-stop delivery system that integrates service delivery across all programs and enhances access to the programs' services." The guidance goes on to state that high-quality one-stop centers seamlessly incorporate services of the core and partner programs and organize and integrate services by function rather than by program.

TEGL 19-16, *Guidance on Services provided through the Adult and Dislocated Worker Programs under the Workforce Innovation and Opportunity Act (WIOA) and the Wagner-Peyser Act Employment Service (ES)*, as amended by title III of WIOA, and for Implementation of the WIOA Final Rules, the DOL emphasizes that training services can be critical to the employment success of some Adults and Dislocated Workers. The guidance also indicates that training services may only be funded by the program if the participants are unable to obtain grant assistance from other sources to pay the costs of such training, including such sources as State-funded training funds or Federal Pell Grants established under Title IV of the Higher Ed.

Ultimately, this waiver aligns with DOL's policy priorities, as it connects education and training strategies by further increasing the partnerships with partner programs and promoting the leveraging of resources to best serve the individual. Additionally, WIOA can report successful outcomes for the participants when Local Areas provide additional employment and supportive services.

- Increase in the number of program participants enrolled in training funded by partner programs.
- Increase in the number of program participants included in the Credential Attainment and Measurable Skill Gains indicators.

Title I Adult and Dislocated Worker participants, especially those who qualify for other grants or programs in need of training services to promote successful employment outcomes, will benefit from this waiver.

The state will periodically examine the appropriateness and effectiveness of this waiver. This strategy ensures that the goals described above are consistent with established objectives of WIOA regulations. Further, the impact of this waiver based on the programmatic outcomes identified above will be included in the state's WIOA Annual Narrative Report.

The Draft State Plan was posted for public comment for 30 days in order to allow the workforce community an opportunity to provide input.