



NOV 14 2019

The Honorable Gavin Newsom
Governor of California
1303 10th Street, Suite 1173
Sacramento, CA 95814

Dear Governor Newsom:

Thank you for your waiver request received on August 28, 2019, 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 (copy enclosed). This letter provides the Employment and Training Administration's (ETA) official response to the State's request and memorializes that California 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'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 of the obligation of eligible training providers (ETPs) to collect and report on the performance data on all students in a training program at WIOA Sections 116(d)(4)(A) and (B) and 122(d)(2)(A) and 20 CFR 677.230(a)(4) and (5) and 20 CFR 680.430(b)(5).

ETA Response: ETA approves, through June 30, 2020, the State's request to waive the obligation of ETPs to collect and report performance data on all students in a training program. ETA reviewed the State's waiver request and plan and has determined that the requirements requested to be waived impede the ability of California to implement its plan to improve the workforce development system. The State must provide information regarding how the Governor will take into account the outcomes of all students in an ETP program of study, with respect to their employment and earnings, as required for the demonstration of continued eligibility in 20 CFR 680.460(f)(1)(iii) and WIOA Section 122. The State will continue to collect and report data for all WIOA-funded participants in accordance with all statutory and regulatory requirements, including WIOA Sections 116 and 122, and as specified at 20 CFR 677.230 and 20 CFR 680.460. While ETA recognizes the importance of informing consumer choice through the provision of quality data on training outcomes, we also recognize that the systems and willingness to collect the required performance data from providers may discourage training provider participation, which is a critical component of the workforce development system.

ETA is available for further discussion and to provide technical assistance to the State to support its goals. The Department of Labor proposed additional flexibility in its Fiscal Year 2018, 2019, and 2020 budgets to give governors more decision-making authority to meet the workforce needs of their states and anticipates proposing these additional flexibilities in future fiscal years. If you have questions, feel free to contact my office at (202) 693-2772.

Sincerely,



John Pallasch
Assistant Secretary for Employment and Training

Enclosure

cc: Dennis A. Petrie, Deputy Director, Employment Development Department
Tim Rainey, Executive Director, California Workforce Development Board
Nicholas Lalpui, Dallas/San Francisco Regional Administrator, Employment and Training Administration
Latha Seshadri, Federal Project Officer, Employment and Training Administration

**STATE OF CALIFORNIA
WORKFORCE INNOVATION AND OPPORTUNITY ACT
WAIVER REQUEST**

Waiver relating to the collection and reporting of performance-related data on all students participating in training programs listed on the Eligible Training Provider List

The California Workforce Development Board (CWDB) and the Employment Development Department (EDD), as the administrative entity of the *Workforce Innovation and Opportunity Act* (WIOA), request a waiver from the provisions outlined in WIOA Sections 116 and 122, and Title 20 *Code of Federal Regulations* (CFR) Section 677.230 and Title 20 CFR Sections 680.400 through 680.530, which require the collection and reporting of performance-related data on all students participating in training programs listed on the State of California's Eligible Training Provider List (ETPL).

In keeping with the guidelines set forth at WIOA Section 189(i) and 20 CFR Sections 679.600-620, please accept the following as a request for waiver.

Background

The State of California recognizes the value and importance of monitoring provider performance, which requires Eligible Training Providers (ETP) to produce data on all individuals, instead of just WIOA-funded participants. However, at this time, these requirements are unrealistic given the following reasons:

- Department of Labor (DOL) Training and Employment Guidance Letter 3-18, *Eligible Training Provider Reporting Guidance under the Workforce Innovation and Opportunity Act*, which details the specific data to be collected, was not released until August 31, 2018.
- Given the absence of guidance, the CWDB and EDD have not been able to collaborate with the state's Case Management System vendor to integrate the necessary changes into its system in a manner that will facilitate timely data entry for the thousands of ETPs in California.
- Given that the ETP Performance Report is required to supply data for Program Year (PY) 2018-19, which ends June 30, 2019, it is not possible to retroactively require the ETPs to accommodate these new requirements to provide the required data. Only after the ETPs have been provided the DOL's non-WIOA data collection requirements, and given sufficient time and the necessary guidance to comply with them, will they be able to provide this data.
- Releasing student information on individuals who are not workforce system participants without their explicit consent may be a violation of federal law and compromise their personally identifiable information (PII).

- Requiring ETPs to provide data on all individuals in the training program may dissuade the ETP from participating as a WIOA program provider, thereby significantly limiting consumer choice.

Under this waiver, the state will continue to collect and report performance data for all WIOA-funded participants.

1. Actions to Remove State or Local Barriers

There are no state or local statutory or regulatory barriers to implementing the requested waiver. California regulations and policy statements are in compliance with current federal law.

2. Waiver Goals and Outcomes

Goals and outcomes related to this waiver request include the following:

- Easing the burden on ETPs to provide performance data on all individuals in the training program.
- Ensuring the protection of non-WIOA individuals' PII.
- Offering more numerous and varied training (greater consumer choice).
- Create stronger partnerships and relationships between ETPs and the public workforce system.

3. Programmatic Outcomes Resulting from Waiver Implementation

This waiver aligns with the EDD's policy priorities as follows:

- Supporting employer engagement.
- Connecting education and training strategies.
- Supporting work-based learning.
- Improving job and career results.
- Complying with other guidance issued by the DOL.

This waiver aligns with DOL's policy priorities, as it connects education and training strategies by reducing the reporting burden on ETPs, thus allowing them to focus more time and resources on producing successful outcomes for WIOA-funded participants; further protecting the privacy rights of ETPs' students who are not WIOA participants.

4. Individuals Impacted by the Waiver

Individuals who access training services, ETPs, and state staff will benefit from this waiver.

5. Monitoring Progress and Implementation

State staff involved with the administration of the ETPL and performance reporting 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 on the state's performance will be addressed in the state's WIOA Annual Report. The state requests this waiver to be in effect for PY 2018-19 and PY 2019-20. The state anticipates the reporting of performance-related data on all students participating in training programs listed on the State of California's ETPL will be available by the time the 2-year waiver has expired.

6. Notice to Local Workforce Development Boards and Public Comment

The State of California issued an Information Notice to the workforce community announcing the potential waiver, and requesting comments for a period of 30 days. No changes had to be made to the waiver language based on the feedback received from the workforce community. Upon approval of the waiver, the state will issue an additional Information Notice announcing the approved waiver.