

U.S. Department of Labor

Employment and Training Administration
200 Constitution Avenue, N.W.
Washington, D.C. 20210



MAR 13 2019

The Honorable Jared Polis
Governor of Colorado
136 State Capitol
Denver, Colorado 80203-1792

Dear Governor Polis:

Thank you for Colorado's waiver request dated December 18, 2018, 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. 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 to expand allowable work experience activities at WIOA Section 129(c)(2)(C) and described at 20 CFR 681.600 to include Registered Apprenticeship.

ETA Response: This waiver is not necessary. The list of allowable work experience activities at WIOA Section 129(c)(2)(C) is illustrative and not exhaustive. Registered Apprenticeship provides both training and employment, and, therefore, may be considered a work experience. When documenting Registered Apprenticeship as a work experience, the State should record the activity as both a training and as "other work experience activity" in the WIOA Participant Individual Record Layout (PIRL).

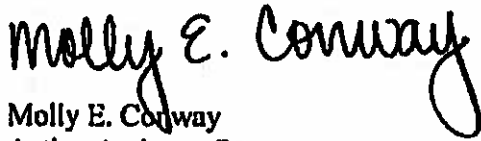
Requested Waiver: Waiver of the statutory formula methodology for Title I Youth/Adult programs.

ETA Response: WIOA Section 189(i)(3)(A)(i) explicitly forbids the Secretary from waiving any statutory or regulatory requirements relating to "the allocation of funds to local areas." Therefore, a waiver of the WIOA Title I Adult and Youth formula methodology cannot be approved. The State must allocate funding to local areas according to the formula in WIOA Sections 128(b) and 133(b). ETA has determined, however, that a waiver of the reallocation provisions at Sections 128(c) and 133(c) may provide Colorado with a solution to some of the issues described in the waiver request, and staff are available to explore this option with the State.

ETA is available for further discussion and to provide technical assistance to the State to support achieving its goals. The Department of Labor proposed additional flexibility in its Fiscal Year 2018 and 2019 budgets to give governors more decision-making authority to meet the workforce needs of their states and will continue to propose these additional flexibilities in future fiscal years. Should Congress pass legislation signed by the President with new legal authority, we will be happy to revisit the areas that cannot currently be waived.

If you have questions or wish to explore additional flexibility, feel free to contact my office at (202) 693-2772.

Sincerely,

A handwritten signature in black ink that reads "Molly E. Conway". The signature is written in a cursive style with a large, looping 'y' at the end.

Molly E. Conway
Acting Assistant Secretary

Enclosure

cc:

Joe Barela, Executive Director, Colorado Department of Labor and Employment
Nicholas Lalpui, Dallas Regional Administrator, Employment and Training Administration
Kajuana Donohue, Federal Project Officer, Employment and Training Administration



COLORADO
Department of
Labor and Employment

Executive Director's Office
633 17th Street, Suite 1200
Denver, CO 80202-3660

December 18, 2018

The Honorable Alexander Acosta
Secretary of Labor
United States Department of Labor
200 Constitution Ave NW
Washington, DC 20210

Dear Mr. Secretary,

On behalf of the Colorado Department of Labor and Employment, the state administrative entity for the Workforce Innovation and Opportunity Act (WIOA), I am respectfully requesting approval for the enclosed WIOA Waivers for the State of Colorado. These waivers were developed in accordance with WIOA, Section 189(i)(3).

The waiver requests address the following WIOA provisions:

- Section 129(c)(2)(C) - Definition of work experience for Youth, to include Registered Apprenticeships and OJTs as a component of Registered Apprenticeships
- Sections 128(b)(1), (2), and (3) and 133(b)(1)(A), (2)(A) and (3) - Statutory formula methodology for Title I Youth/Adult programs

The waiver requests were posted for public comment for 30 days. We received three comments during the public comment period, which ended on November 8, 2018. None of the comments impacted the content of the waiver requests.

We appreciate the opportunity to submit Colorado's waiver requests, and look forward to receiving the Secretary's approval. If you have any questions, please do not hesitate to contact Kate Anderson at 303-318-8984, or by email at katez.anderson@state.co.us.

Respectfully,

Samuel D. Walker
Executive Director

Cc: Nicholas Lalpui, Regional Administrator, Region 4
Kajuna Donohue, Federal Project Officer, Colorado
William Dowling, Director of Employment & Training, CDLE
Elise Lowe-Vaughn, Director of Workforce Development Programs, CDLE



COLORADO WIOA WAIVER REQUEST #1
PREPARED BY THE COLORADO DEPARTMENT OF LABOR AND EMPLOYMENT

WAIVER OF DEFINITION OF WORK EXPERIENCE FOR YOUTH, to include Registered Apprenticeships and OJTs as a component of Registered Apprenticeships

1. Statutory and/or regulatory requirements the State would like to waive:

The definition of Work Experience for Youth as described in **WIOA Section 129(c)(2)(C)**. This waiver would allow a) Registered Apprenticeship and b) On-the-Job Training (OJT) that is a component of Registered Apprenticeship as types of work experience for youth, and therefore also count both activities towards the Youth work experience priority, which requires 20% of Youth program funds to be spent on paid and unpaid work experiences. (§ 681.590)

WIOA includes a major focus on providing youth with work experience opportunities. This waiver would remove the disincentives to creating registered apprenticeships for youth. Registered apprenticeships are in practice paid work experiences that include academic and occupational education, and should be considered a type of work experience for youth. OJT should also be considered work experience for youth, whether it is a component of a registered apprenticeship strategy or not.

2. Actions the State has undertaken to remove State or local barriers:

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

3. State strategic goal(s) and Department of Labor priorities supported by the waiver:

State strategic goals and CDLE priorities supported by the waiver:

- Expand regionally-focused sector partnerships that are championed by business and industry to drive career pathways and skill-based hiring;
- Expand and implement a full spectrum of work-based learning opportunities, with an emphasis on the expansion of the number and types of apprenticeships;
- Establish a customer-centric focus to increase access to and effectiveness of services for all customer groups with barriers to employment.

This waiver request is closely aligned with the Department of Labor's priorities to expand apprenticeships and to support work-based learning opportunities.

4. Projected programmatic outcomes resulting from implementation of the waiver:

The exclusion of registered apprenticeships and OJTs as a component of registered apprenticeships from work experiences for youth is impeding Colorado's progress and fragmenting the efforts underway to establish a comprehensive approach to work experiences in Colorado.

The greater flexibility resulting from this waiver will allow Colorado to:

- Increase the number of WIOA youth participants that are participating in Registered Apprenticeship programs by removing the silos between apprenticeships and other types of work experience.
- Implement a more cost-effective and integrated service delivery system by allowing apprenticeships to count towards the 20% Youth Work Experience expenditure requirement.
- Allow local areas to focus resources on the long-term goal of increasing the use of work-based learning opportunities, particularly apprenticeships.

5. Individuals, groups or populations benefitting from the waiver:

- Out-of-school youth and in-school youth in all eligibility and barrier categories
- Older, out-of-school, low-income and disconnected youth, who have particularly demonstrated the need for intensive youth program services and supports such as work experiences
- Local boards needing performance improvement to ensure that 20 percent of Youth funds are spent on allowable work experience costs
- One-Stop Partners seeking to align their service delivery to youth and businesses with the one-stop system and leverage resources to meet customer needs.

6. How the State plans to monitor the waiver implementation, including collection of waiver outcome information:

CDLE has a long standing, comprehensive monitoring and performance accountability system that measures and evaluates results for job seekers and employers accessing Colorado's network of One-Stop centers. On a monthly and quarterly basis, CDLE reviews and analyzes client enrollment and service levels, program expenditures, and performance outcomes. In addition, State program monitors conduct quarterly reviews designed to assure that contract requirements are being met for all WIOA programs. On an annual basis, comprehensive compliance monitoring is conducted onsite utilizing outcome reports generated from CDLE's statewide databases. Should this waiver request be granted, CDLE will ensure regular review of WIOA programs and discretionary grants to monitor the outcomes and impacts of this waiver authority.

CDLE will utilize the following mechanisms to track and monitor the use of waivers in each local area:

- Regional and local plans
- Workplans and quarterly goals specific to the WIOA youth and adult formula programs
- Local policies
- Activity and performance reports available through state database systems

7. Assurance of State posting of the request for public comment and notification of affected local workforce development boards:

This waiver request will be published for a period of 30 days on the public websites maintained by the Colorado Department of Labor and Employment and the Colorado Workforce Development Council, allowing for public comment on its content and potential impact. In addition, a copy of the waiver will be available for public inspection at CDLE offices, and electronic copies of the waiver will be sent via e-mail to local boards and one-stop operators. Any comments received will be provided with submission of the waiver request.

COLORADO WIOA WAIVER REQUEST #2
PREPARED BY THE COLORADO DEPARTMENT OF LABOR AND EMPLOYMENT

WAIVER OF STATUTORY FORMULA METHODOLOGY FOR TITLE I
YOUTH/ADULT PROGRAMS

1. **Statutory/Regulatory Requirements to be waived: WIOA Sections 128(b)(1), (2), and (3) and 133(b)(1)(A), (2)(A) and (3):** Statutory formula methodology for the Title I Youth and Adult programs' within state allocations. Currently the WIOA statute requires states to use one of two formula options to distribute Title I Youth and Adult funds to local areas.

Note: This waiver request does not impact the requirement for the state to allocate funds to local areas; it is strictly to allow modification of the within state formula methodology, similar to the WIOA provision allowing modifications to the WIOA Title I Dislocated Worker within state formula.

The waiver, if granted, would allow Colorado to change the statutory formulas in one or more of the following ways, after consultation with the Governor, the state workforce development council, and various stakeholders:

- Modify the 4.5% excess unemployment standard to reflect current labor market conditions;
- Replace the excess unemployment factor with a different factor, for example, Census data related to groups with barriers to employment;
- Add a factor to the existing formulas, such as Census data related to groups with barriers to employment; or
- Apply the state's percentage cut, or increase, equally to all local areas.

Reasons why the waiver is being requested:

- The methodology for the within state formulas was originally developed 20 years ago under WIA and should be updated in accordance with current economic, structural and demographic shifts and trends.
- WIOA requires priority of service for a variety of groups with barriers to employment, who are not considered in the formula methodology.
- "Excess unemployment" is required for 1/3 of the youth and adult formula factors and it is also required in the alternative formulas.
- The standard for excess unemployment is 4.5%. However, the PY16 unemployment rates for seventeen of the states were below this level, with an additional fourteen states having an unemployment rate of 4.6 - 5%. In most cases these rates are expected to go down even further for PY17.

- The impact within Colorado and other states is that some local areas end up having a Zero or close to Zero in the excess unemployment factor, thereby creating a reduction in funding greater than 10%, even with the 90% hold harmless calculation applied to the formula.
- As long as unemployment rates stay at historic lows in Colorado and other states, many local areas will be victims of this formula inequity, with major changes to their percent share of the total funding from year to year. Most recently the primary changes represented double digit decreases in funding, resulting in layoffs and reduction in services, thus destabilizing the system. In limited cases there were also double digit increases.

Unemployment Rate - July 2018

Colorado: 2.8%

National: 3.9%

- The following is the actual impact of the required formula upon the PY18 Youth funding, versus PY17 Youth funding, followed by the equivalent for the PY18 versus PY17 Adult funding:

WIOA YOUTH	PY17	PY18	Difference	% Change
Adams	\$779,653	\$745,711	-\$33,942	-4.4%
Arapahoe	\$935,230	\$808,495	-\$126,735	-13.6%
Boulder	\$466,470	\$407,368	-\$59,102	-12.7%
Denver	\$996,697	\$853,434	-\$143,264	-14.4%
El Paso	\$1,393,526	\$1,224,255	-\$169,271	-12.1%
Jefferson	\$622,650	\$542,781	-\$79,869	-12.8%
Larimer	\$541,658	\$567,855	\$26,197	4.8%
Mesa	\$529,652	\$652,137	\$122,485	23.1%
Rural	\$1,651,422	\$1,541,642	-\$109,780	-6.6%
Weld	\$595,038	\$608,997	\$13,959	2.3%
TOTAL	\$8,511,996	\$7,952,674	-\$559,322	-6.6%

WIOA ADULT	PY17	PY18	Difference	% Change
Adams	\$774,211	\$716,952	-\$57,259	-7.4%
Arapahoe	\$924,242	\$801,408	-\$122,834	-13.3%
Boulder	\$315,807	\$253,036	-\$62,771	-19.9%
Denver	\$1,021,261	\$871,715	-\$149,546	-14.6%
El Paso	\$1,325,037	\$1,180,877	-\$144,160	-10.9%
Jefferson	\$587,310	\$509,878	-\$77,431	-13.2%
Larimer	\$363,735	\$390,253	\$26,518	7.3%
Mesa	\$495,328	\$587,656	\$92,328	18.6%
Rural	\$1,608,196	\$1,574,444	-\$33,752	-2.1%
Weld	\$478,290	\$510,873	\$32,583	6.8%
TOTAL	\$7,893,417	\$7,397,094	-\$496,324	-6.3%

Note:

- Colorado's calculations were reviewed by the USDOL Dallas Regional Office and determined to be accurate.
- Colorado also calculated local allocations using the alternative youth and adult formulas, which resulted in even greater local disparities.

2. Actions the State has undertaken to remove State or local barriers: N/A - There are no state or local statutory or regulatory barriers to implementing the proposed waiver.

3. State strategic goals, Department of Labor priorities supported by the waiver:

State strategic goals supported by the waiver:

- Expand regionally-focused sector partnerships that are championed by business and industry to drive career pathways and skill-based hiring
- Expand and implement a full spectrum of work-based learning opportunities, with an emphasis on the expansion of the number and types of apprenticeships
- Establish a customer-centric focus to increase access to and effectiveness of services for all customer groups with barriers to employment

This waiver request is closely aligned with the Department of Labor's priorities to strengthen and improve our nation's public workforce system and help get Americans into high-quality jobs and careers and help employers hire and retain skilled workers. We cannot stabilize our local system with these severe funding fluctuations.

4. Programmatic outcomes resulting from the implementation of the waiver:

- The waiver is expected to minimize swings in local allocations, thus minimizing layoffs and other significant disruptions in the delivery of services within both the youth and adult programs.
- Financial stabilization of the local workforce system will allow local areas to focus resources on the long-term goals of:
 - Increasing the use of sector strategy initiatives
 - Increasing the use of work-based learning opportunities, particularly apprenticeships
 - Continuing progress toward serving 100% of customers with barriers to employment

5. Individuals, groups, or populations benefitting from the waiver:

- Out-of-school youth and in-school youth in all eligibility and barrier categories
- Priority of service adults, including veterans, low income, public assistance recipients, those who are basic skills deficient, the disabled, and other groups with barriers to employment
- Local boards seeking a stable workforce infrastructure that is poised to meet the long-term needs of their communities
- One-Stop Partners seeking to align their service delivery to youth and adults with the one-stop system and leverage resources to meet customer needs.

- 6. How the State plans to monitor the waiver implementation, including collection of waiver outcome information:** CDLE has a long standing, comprehensive monitoring and performance accountability system that measures and evaluates results for job seekers and employers accessing Colorado's network of One-Stop centers. On a monthly and quarterly basis, CDLE reviews and analyzes client enrollment and service levels, program expenditures, and performance outcomes. In addition, State program monitors conduct quarterly reviews designed to assure that contract requirements are being met for all WIOA programs. On an annual basis, comprehensive compliance monitoring is conducted onsite utilizing outcome reports generated from CDLE's statewide databases. Should this waiver request be granted, CDLE will ensure regular review of WIOA programs and discretionary grants to monitor the outcomes and impacts of this waiver authority.

CDLE will utilize the following mechanisms to track and monitor the use of waivers in each local area:

- Regional and local plans
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 - Local policies
 - Activity and performance reports available through state database systems
- 7. Assurance of State posting of the request for public comment and notification of affected local workforce development boards:** This waiver request will be published for a period of 30 days on the public websites maintained by the Colorado Department of Labor and Employment and the Colorado Workforce Development Council, allowing for public comment on its content and potential impact. In addition, a copy of the waiver will be available for public inspection at CDLE offices, and electronic copies of the waiver will be sent via e-mail to local boards and one-stop operators. Any comments received will be provided with submission of the waiver request.

Public Comments Received on Colorado's Waiver Requests November 8, 2018

1. Can (waiver) request number 1 include explicit language detailing that the waiver should allow both OJT and RTI for apprenticeship to be included as part of an apprenticeship that is a work experience cost?

2.
 - a. Is the state planning on utilizing AD Priority of Service barriers/Youth barriers as factors in place of the excess unemployment factor?
 - b. Can you define "Census Data" in regards to it being used as factor for calculating the allocations in the future?
 - c. Utilizing the following demographics/data could be very helpful to rural areas: - High school drop out rate - Teen pregnancy rate - % of low income population to general area population - % of population on assistance programs to general area population - Utilizing Labor Surplus Area data and Metro Statistical Area data as CDHS has in determining Employment First county program waivers.

3. From my personal experience and what I've heard other job seekers (those on government assistance) say is WIOA is limiting the amount of money they INVEST in people. Case managers are only allowed to give their clients money to enroll in mediocre careers...Home Health Care, CDL (truck drivers), Flagger etc. Anything UNDER \$3,000 and has become very strict.
I was fortunate enough to have someone believe in me and give me more funding but I had to fight for it. Unfortunately, I've found myself back at square one and even though WIOA has the money to help train me and get my into an in-demand IT career...they won't because training cost over \$3,000.
We all know that if you don't use the funding, you lose it. I seen a graph that showed that less money was used this year in comparison to last year...let me assure you, its not because WIOA is doing a great job in training people and those on government assistance is living better lives. It's because somewhere in this system (from the top) case managers are being told NOT to enroll their clients in programs over \$3,000. Colorado is growing rapidly...especially in the tech field and counties...Denver county in particular is refusing to fund training for good paying careers. Now granted, everyone doesn't have to the skill/desire to enter such fields, but those of us who are capable, SHOULD NOT be turned away and forced to pick pedestrian employment!!!