



**NOV 14 2019**

The Honorable Thomas Wolf  
Governor of Pennsylvania  
508 Main Capitol Building  
Harrisburg, PA 17120

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Dear Governor Wolf:

Thank you for your waiver request received on August 16, 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 Commonwealth's request and memorializes that Pennsylvania will meet the outcomes and implement the measures identified in its plan to ensure accountability agreed to by Pennsylvania 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 Commonwealth's request to waive the obligation of ETPs to collect and report performance data on all students in a training program. ETA reviewed the Commonwealth's waiver request and plan and has determined that the requirements requested to be waived impede the ability of Pennsylvania to implement its plan to improve the workforce development system. The Commonwealth 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 Commonwealth 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 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 Commonwealth 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,



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John Pallasch  
Assistant Secretary for Employment and Training

Enclosure

cc: W. Gerard Oleksiak, Secretary, Pennsylvania Department of Labor and Industry  
Eileen Cipriani, Deputy Secretary for Workforce Development, Pennsylvania Department of Labor and Industry  
Leo Miller, Boston/Philadelphia Regional Administrator, Employment and Training Administration  
Stephen Duval, Division Chief, Employment and Training Administration

Aug. 16, 2019

Mr. Leo Miller, Regional Administrator  
U. S. Department of Labor Employment and Training Administration Region 2  
170 S. Independence Mall West  
The Curtis Center, Suite 825 East  
Philadelphia, PA 19106-3315

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Dear Mr. Miller:

Pennsylvania seeks U. S. Department of Labor, or U.S. DOL, approval for a waiver of the statutory and regulatory requirements of the Workforce Innovation and Opportunity Act, or WIOA, through June 30, 2020 to allow Eligible Training Providers, or ETPs, not to collect and report the demographic information and performance data of non-WIOA-funded students participating in training programs listed on the state's Eligible Training Providers List, or ETPL, within local workforce development areas requesting such relief. This request is submitted in accordance with the Secretary's authority at WIOA Section 189(i)(3)(B) and 20 Code of Federal Regulations, or CFR, § 679.620 to waive certain requirements. Specifically, Pennsylvania requests from U.S. DOL a waiver of WIOA Sections 116 and 122, and regulations at 20 CFR 677.230 and 20 CFR 680.400 through 680.530. Under this waiver, and in collaboration with local workforce development boards, ETPs will continue to collect and report demographic information and performance data for all WIOA-funded participants in accordance with WIOA section 116(d)(4)(A) and as specified at 20 CFR 677.230. Also, under this waiver, local workforce development boards retain the ability to supplement Pennsylvania's criteria and information requirements for ETPs applicable to their respective local workforce development area.

Our stakeholder feedback and observation of other states has shown us that additional strategies are required to achieve WIOA's goals of *consumer choice* and *informed consumer choice*. Pennsylvania is committed to WIOA's vision and goals, while acknowledging the challenges surrounding an ETP's collection and reporting of non-WIOA funded student data. A waiver will help reverse the trend of training providers refusing to offer courses on the ETPL, therefore improving WIOA programs and growing consumer choice for WIOA-eligible participants. A waiver will help Pennsylvania further develop our workforce investment system while continuing to promote a demand-driven system.

The waiver request was made available for public review, comments received and responses supplied. The attached details the waiver requested by Pennsylvania.

Considering the approval of like submissions by other states, and given Pennsylvania's strategic approach to this waiver's use, the state requests expedited approval. Your review and consideration of this waiver request are appreciated. Please contact me with any questions.

Sincerely,



Eileen Cipriani,  
Deputy Secretary for Workforce Development

## Commonwealth of PA WIOA Waiver Request

### Eligible Training Providers allowance not to collect and report demographic information and performance data on non-WIOA-funded students participating in courses listed on the state's Eligible Training Providers List

1. The statutory and/or regulatory requirements the State would like to waive. This request is submitted in accordance with the Secretary's waiver authority outlined in Section 189(i)(3)(B) of the Workforce Innovation and Opportunity Act, or WIOA, and 20 CFR 679.620. The Commonwealth of Pennsylvania, or Commonwealth, seeks a waiver allowance through June 30, 2020 of the obligation of Eligible Training Providers, or ETPs, to collect and report non-WIOA-funded student demographic information and performance data participating in training programs listed on the state's Eligible Training Providers List, or ETPL, as outlined in WIOA Sections 116 and 122, and at 20 CFR 677.230 and 20 CFR 680.400 through 680.530.

Specifically, the Commonwealth requests waiver authority to preclude ETPs from the requirement of collecting and reporting non-WIOA-funded student demographic information and performance data. Additionally, in cases where non-WIOA-funded student demographic information or performance data are not available, the Commonwealth requests waiver authority to report null or "0" (zero) in the ETP performance report. The waiver allowances will assist the Commonwealth to further develop its workforce while continuing to focus on innovative strategies for a demand-driven workforce.

Under this waiver, all ETPs, in collaboration with local boards, will continue to collect and report demographic information and performance data for all WIOA-funded participants in accordance with WIOA section 116(d)(4)(A) and as specified at 20 CFR 677.230.

Under this waiver, local boards retain the ability to supplement the Commonwealth's criteria and information requirements for ETPs applicable to their respective local area.

The Commonwealth values and promotes WIOA's goals, including *consumer choice* and *informed consumer choice*. In support of these goals, the Commonwealth has been acting upon two primary objectives: require all ETPs to comply with WIOA's new data collection and reporting parameters, and to offer the public a useful and informative ETPL. Under WIOA Section 116(d)(4)(A) and 20 CFR 677.230(a)(4) and (5), ETPs, with respect to each program of study (or the equivalent), must report demographic information and performance data with respect to all individuals (including non-WIOA-funded students) engaging in a program of study so that the data could be reflected on the ETP performance report. WIOA-funded student data so that the data could be reflected on the ETP performance report. Additionally, the Commonwealth has made it possible for those ETPs collecting and reporting the non-WIOA-funded student data to the Commonwealth for ETPL course/program eligibility. The Commonwealth encourages all ETPs to continue to improve student data collection and reporting processes, as well as data security measures so that student information and data are secured.

The Commonwealth has engaged the public workforce system stakeholders over the past year to determine the scope and degree to which ETPs will comply with the new non-WIOA-funded student information and data collection and reporting requirements. Reportedly, some ETPs have accepted the new WIOA information and data collection requirements and are taking measures to comply. The Commonwealth could not find a source that postulates the probable ETP compliance level to collect

report the non-WIOA funded student information and data, but the rate is expected to be low. The Commonwealth is also interested to review the reported non-WIOA-funded student data to discern the degree to which the data meet minimal standards of validity and accuracy. This will be especially important to understand if the ETP supplies self-reported data from students collected through surveys or other means. Lastly, it is expected there will be low-levels of student response rates to data requests.

However, significant concerns and issues regarding ETPs' compliance, or lack thereof, brought forth by local workforce development boards, or local boards, and other statewide workforce system stakeholders have grown. The Commonwealth has come to understand WIOA's new ETP requirements are having a significant negative effect upon consumer choice. Local boards are reporting highly qualified training providers no longer are interested in ETPL inclusion. Local boards report many ETPs find WIOA's requirements troublesome and burdensome. There is growing concern that other ETPs will refuse to apply for continued inclusion on the ETPL. The loss of these and other ETPs will lead to the Commonwealth having a less robust list of training providers, thereby limiting consumer choice. It should be noted, depending upon the circumstances, quality training programs may not be available to fulfill a local board's training needs.

Local boards have received feedback from training providers as to why they may not apply to be included on the state's ETPL.

- ETPs have many students in the training cohort, of whom only a small percentage are WIOA program participants.
- Additional administrative costs are associated with collection and reporting of the non-WIOA-funded student information and data.
- Providers lack staff or will not hire additional staff to perform the WIOA-required information and data collecting process.
- Some lack the internal systems or management information capacity to collect and report all student information and data.
- Providers would have to collect and report personally identifiable information, or PII, therefore exposing the entity to potential liabilities.
- There is general concern about the protection of PII, particularly Social Security numbers.
- Providers continue to cite the Family Educational Rights and Privacy Act of 1974, or FERPA, requirements and a difficulty to comply accordingly.

The Commonwealth has observed that these concerns and issues are common to many states. It is noted there are an extraordinary number of states being approved by the U.S. Department of Labor Employment and Training Administration, or ETA, for waiver allowances regarding this specific issue. As of April 5, 2019 ETA has approved at least 21 similar waiver requests.

The disincentives ETPs face are daunting. These factors have led most of the Commonwealth's local boards to support this waiver allowance request. The Commonwealth recognizes the WIOA requirement for ETPs to collect and report all student information and data is leading to fewer ETPs choosing to be included on the state's ETPL, and resulting in diminished consumer choice. Also, there are valid reasons to question the validity and accuracy of the reported non-WIOA-funded student information and data; and, when added to the ETPL, the effect that the non-WIOA-funded student information and data truly play in promoting informed consumer choice.

The Commonwealth is committed to achieving WIOA's vision and goals while also acknowledging the challenges surrounding an ETP's collection and reporting of all student information and data. The totality of statewide feedback and national observation has led the Commonwealth to realize that additional objectives and strategies are required to achieve WIOA's goals of *consumer choice and informed consumer choice*.

**2. Actions the State has undertaken to remove State or local barriers:**  
There are no known state or local barriers to the implementation of these waiver allowances.

**3. State strategic goal(s) and Department of Labor priorities (i.e. expansion of apprenticeship, improved employer engagement, etc.) supported by the waiver.**  
It is noted ETA recently procured a nationally recognized consulting firm to review the Commonwealth's eligible training provider policy and provide technical assistance. The firm researched other states' ETP policies, analyzed the Commonwealth's ETP policy, and deemed it among the nation's best policies. Thereafter, the firm recommended objectives and strategies for the Commonwealth to consider.

Goals and priorities supported by this waiver request include:

- Align training with the employers' needs offering in-demand occupations to job seekers.
- Increase use of the ETPL by individuals pursuing training-related to jobs that are in-demand.
- Provide a larger selection of training offerings for WIOA participants using individual training accounts, or ITAs, via the public workforce system.
- Increase the number of Registered Pre-Apprenticeship and Apprenticeship programs on the ETPL.
- Increase participation among training providers, which may lead to lower cost and more robust demand-driven training options.
- Strengthen partnerships between ETPs and the public workforce system.
- Improve consumer choice by ensuring qualified ETPs, offering quality programs, can be considered for inclusion on the ETPL.
- Increase levels of statistically valid and accurate ETP-related information to provide informed consumer choice for potential students, job seekers and those seeking career advancement.

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

- Maintain or increase the rate of ITA-funded training opportunities.
- Improve the percentage of ITA-funded training completions.
- Improve the number of certificates earned.
- Improve security measures meant to protect student PII.
- Maintain or increase the number and diversity of ETPs and their respective programs (or the equivalent) for availability on the state's ETPL.
- Lower the cost of ITA training due to greater numbers of ETP availability.
- Improve the validity and accuracy of the ETP-related information, including the student performance data being collected and reported.
- Develop stronger collaborative relationships with local boards and ETPs.

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

- There will be greater consumer choice for WIOA participants.
- Employers with in-demand jobs will have the opportunity to hire trained participants.
- ETPs will not be burdened with the administrative and financial obligation to collect and report non-WIOA funded students' information and data.

- Local boards will have a greater diversity of ETPs while promoting more successful planning and implementation of ITA-based training.
- Due to greater competition between ETPs, the Commonwealth anticipates training costs will stabilize.

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

The Commonwealth recognizes the importance of monitoring training provider performance and the waivers provided. To ease data sharing burdens and provide a robust data source, the Commonwealth is working to update its workforce development system of record, CWDS, with the necessary information and data collection interfacing and reporting capabilities to lawfully collect and report the Program Year (PY) 2019 non-WIOA student information for compilation on the ETA-9171 report due October 2020. The Commonwealth anticipates the CWDS design and development phases will be complete by August 2020, allowing for the issuance of the ETA-9171 report.

Local boards are responsible for oversight and the monitoring of the local workforce system, including aspects surrounding the training offered to eligible WIOA participants and the selection and performance of ETPs. Local boards make recommendations to the Commonwealth as to ETP inclusion on the state's ETPL, and they review ETP performance as a measure of continuing ETPL eligibility. Local boards may select ETPs willing and able to collect and report the non-WIOA-funded student information and data so that the local area's ITA-related training data are reflected on the ETA-9171 report. In support of this waiver allowance, local boards will provide the Commonwealth with annual waiver evaluation reports demonstrating the waiver's effect on local programs to ensure programmatic goals and outcomes are being met.

Commonwealth staff involved with the administration of the ETPL and ETP performance reporting will periodically examine this waiver's effectiveness, review local board waiver evaluation reports and submit to the PA Workforce Development Board a waiver evaluation report. Waiver evaluation results will be published in the Commonwealth's WIOA Annual Report.

This strategy ensures that the goals described above, as well as those outlined in the Commonwealth's WIOA Combined Plan, are consistent with established objectives of WIOA and its applicable regulations.

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

The Commonwealth notifies many statewide workforce system stakeholders, including local boards and one-stop system program partners and providers, of the public posting of all WIOA waiver requests.

The Commonwealth assures the U.S. Department of Labor that this waiver request was published on the L&I public website for public comment at:

<http://www.dli.pa.gov/Businesses/Workforce-Development/Pages/Plans%20and%20Reports.aspx>.

The Commonwealth received and responded to public comments; please see Attachment 1 for responses.

Upon approval of this waiver request by the U.S. Department of Labor, the Commonwealth will issue a notification to the same stakeholders of any actions stakeholders need to take upon the waiver allowance's implementation. Waiver allowances are posted as an addendum of the Commonwealth's WIOA Combined Plan.

## ATTACHMENT 1

### Responses to public comments received during the public posting of the state's WIOA waiver request *"Eligible Training Providers allowance not to collect and report demographic information and performance data on non-WIOA-funded students participating in courses listed on the state's Eligible Training Providers List"*

The Pennsylvania Department of Labor & Industry, or L&I, is submitting to U.S. DOL a WIOA waiver request entitled *"Eligible Training Providers allowance not to collect and report demographic information and performance data on non-WIOA-funded students."* The overall goal of the waiver request is to not adhere to a WIOA requirement forcing eligible training providers, or ETPs, to collect and report non-WIOA-funded students' demographic information and performance data. This requirement is considered a barrier by certain ETPs. The requirement was designed to improve *"informed consumer choice"* on behalf of eligible WIOA participants and as a means of helping local workforce development boards, or local boards, to determine quality training programs. In response to WIOA and federal guidance, the state expended resources to upgrade the workforce development system of record to accept the new ETP all-student information and data.

The state has seen an unintended and unfortunate effect the WIOA ETP requirement has had upon WIOA programs' training activities over the past three years. Specifically, there is an increasing number of quality ETPs choosing not to make their courses available for eligible WIOA participants and citing the collection of non-WIOA-funded students' demographic information and performance data as the onerous cause. As ETPs opted not to offer courses to WIOA eligible participants the concept of *"consumer choice"* no longer was being served. After a year-long debate, including the soliciting of local board input, Pennsylvania decided to submit the waiver request to U.S. DOL for consideration.

On August 5, 2019, L&I completed the public posting phase of the state's proposed WIOA waiver request *"Eligible Training Providers allowance not to collect and report demographic information and performance data on non-WIOA-funded students."* Pennsylvania will submit the waiver request to U.S. DOL no later than Friday, August 16, 2019.

L&I appreciates and thanks the commenters who submitted words of support, as well as to commenters who expressed concerns, about the waiver. The following table indicates the type of entities that provided public comments.

| Entity            | Support | Concern |
|-------------------|---------|---------|
| LWDB              | 4       | 2       |
| 2-4 year colleges | 9       | 0       |
| Private School    | 3       | 0       |
| Public school/CTC | 2       | 0       |
| Totals            | 18      | 2       |



## ETP Waiver Public Posting Comments

### Supporting Comments

Most of the public commenters (i.e. 18 out of 20) expressed support for the waiver. The types of entities that submitted comments represented many WIOA training stakeholder groups. Waiver supporters offered reasons that are found articulated within the waiver request. The comments provided below are an indication of the strong support this waiver has elicited.

- A university with multiple campuses found throughout the commonwealth indicated that it will, once again, be able to apply for ETP status.
- A local board indicated that in 2016 there were fifteen participating ETPs offering 203 courses in their local area, but in 2018 there were only eight ETPs offering 44 courses; as of August 2019, the local area had six ETPs participating in WIOA training.
- A local board pointed out a recent federal government guidance regarding the Family Educational Rights and Privacy Act of 1974, or FERPA, allowing disclosure of student personal identifying information for WIOA performance accountability purposes does not fully address ETP concerns; training and educational institutions still find it problematic to supply data on non-WIOA funded students in the same class as WIOA funded students citing legal concerns of confidentiality as a conflict. The same local board feels the waiver reduces the burden to demonstrate equitable performance across all populations regardless of barriers by ETPs who are funded through a variety of sources, not just WIOA.

### Non-Supporting Comments

**Concern:** A local board expressed their concern that the proposed waiver would remove ETP requirements to report on non-WIOA funded students, substantially reducing the availability of performance information for both WIOA Title I eligible participants and local boards to make informed investments in training programs.

**Response:** The Commonwealth values and promotes WIOA's goals, including *informed consumer choice* and *consumer choice*. It was made clear by local boards' feedback, collected prior to the drafting of the waiver, that some valued the new WIOA ETP requirement and anticipated greater informed consumer choice due to the additional student information and data collected. The state was mindful of this feedback when it included the following language into the waiver request: "Under this waiver, local boards retain the ability to supplement the Commonwealth's criteria and information requirements for ETPs applicable to their respective local area." The state respects local governance and the lawful decisions local area officials and their local boards make. If the local board deems the WIOA ETP requirement of collecting and reporting all-students information and data is critical to the local board's mission then the local board must indicate through local ETP policy and guidance what is required of ETPs. Only local areas making use of the waiver allowance will be required to submit the annual ETP waiver evaluation report. The workforce development system of record is being upgraded to accept ETP all-student demographic information and performance data. It is noted that the commonwealth's ETP policy is slated for review and revision; if this waiver is approved the policy will reflect the waiver's options and responsibilities.

**Concern:** A local board expressed their concern that the proposed waiver would remove valuable course performance information that the local area's future WIOA Title I eligible participants should have access to. The local board offered a compromise that the waiver apply only to the state's institutions of higher education reasoning that private trainers would continue to comply with the WIOA requirement.

**Response:** The possibility of excluding the state's institutions of higher education was considered while drafting the waiver request. Ultimately, it was decided that all ETPs would be included in the waiver to preclude potential legal issues from arising.

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Any comments, questions or concerns regarding this communication can be addressed to the following L&I email resource account: [RA-LI-BWDA-Policy@pa.gov](mailto:RA-LI-BWDA-Policy@pa.gov)

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