



OCT 11 2017

The Honorable Greg Abbott  
Governor of Texas  
Post Office Box 12428  
Austin, Texas 78711

Governor Abbott:

Thank you for your request for waivers of statutory and regulatory requirements under the Workforce Innovation and Opportunity Act (WIOA), submitted on September 21, 2017 (copy enclosed). The requested waivers are to support and provide flexibility to the State of Texas during its recovery from Hurricane Harvey. This letter provides the Employment and Training Administration's (ETA) formal response to your requests. 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 and constitutes a modification to the State's WIOA State Plan. Except as noted, the approved waivers apply only to the local areas identified in Dislocated Worker Grant number EM-31141-17-60-A-48 as eligible for disaster clean-up projects, referred to below as "disaster-impacted local areas."

Requested Waiver: Waiver of the language in WIOA sec. 134(b) that limits the use of funds allocated under secs. 133(b)(2)(A), 133(b)(2)(B), and 133(b)(3) to the required and permissible local employment and training activities described in secs. 134(c) and 134(d). Texas is also seeking a waiver of the provision that limits the use of funds allocated under sec. 128(b) to the youth program elements described in sec. 129(c)(2).

Texas requests flexibility to allow local areas to use Adult, Dislocated Worker, and Youth local formula funds as if they have the same flexibility and requirements as statewide employment and training activities described in WIOA sec. 134(a) and the required and allowable statewide youth activities described in WIOA sec. 129(b). In ETA's discussions with the State, Texas identified specific provisions of the statewide allowable activities it would like to conduct. ETA reviewed allowable activities available for both statewide funds and local formula funds, and concluded that flexibility largely exists in permissible uses of local formula funds to conduct the activities of interest to the State and its disaster-impacted local areas. However, ETA identified two activities of interest for which a waiver is necessary.

ETA grants a waiver to permit the State of Texas and its disaster-impacted local areas to use local Adult and Dislocated Worker formula funds for the development or identification of education and training programs that have the characteristics referenced in WIOA sec. 134(a)(3)(A)(iii) as described at 20 CFR § 682.210(d). ETA also grants a waiver to allow the State of Texas and its disaster-impacted local areas to use Youth formula funds to support the

development of alternative, evidence-based programs, and other activities that enhance the choices available to eligible youth and which encourage youth to reenter and complete secondary education, enroll in post-secondary education and advanced training, progress through a career pathway, and enter into unsubsidized employment that leads to economic self-sufficiency (WIOA sec. 129(b)(2)(B)). ETA approves these waivers on the condition that local areas must continue to conduct required local activities for all funding streams.

Requested Waiver: Waiver of the limitation on the use of funds for capitalization of business at WIOA sec.181(e) to permit funds to be used to capitalize small businesses that were affected by Hurricane Harvey, up to \$5,000 per affected business.

Texas requests the ability to provide up to \$5,000 for business capitalization to individuals who have completed entrepreneurial or microenterprise training. ETA grants approval to apply this waiver to EM-31141-17-60-A-48 through a grant modification. This waiver permits the use of National Dislocated Worker Grant (NDWG) funds of up to \$5,000 to capitalize a small business in concert with entrepreneurial or small business training for the individual benefiting from the capitalization, within certain parameters. The following conditions apply to the use of funds for small business capitalization under this waiver:

1. Grant assistance must be limited to no more than \$5,000 per individual/business.
2. Entrepreneurial and micro-enterprise training is required for the individual benefiting from the capitalization.
3. Use of funds to cover salaries is not permitted.
4. Use of funds for business capitalization revolving loans is not permitted.
5. The use of the NDWG for business capitalization is limited to no more than 25 percent of the NDWG funds provided to the State under EM-31141-17-60-A-48.
6. The State is required to obtain and document the receipt of legitimate estimates for expenses prior to disbursing funds. The State also must require receipts after the item/service is provided, to ensure that the actual cost of the good/service is not less than the estimate.
7. The State must have sufficient financial systems in place to track funds dispersed under this business capitalization waiver, as well as the ability to recapture funds that were not used by eligible businesses in instances where the final receipt is less than the original estimate.
8. The policy developed by the State to implement this waiver must be consistent with the conditions outlined in this letter.
9. Applications for business capitalization must be approved by the State in accordance with criteria developed by the State that are consistent with the conditions contained in this letter. The applications must be reviewed by a committee prior to approval to ensure rigor and consistency in the handling of business capitalization requests.
10. The State is required to monitor local implementation of this waiver.

In addition, other sources of Federal law and regulations place restrictions on the use of Federal funds, including WIOA funds, for activities related to business capitalization, such as appropriations law; Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance); and the Federal Acquisitions Regulations (FAR) set forth at 48 CFR part 31, Contract Cost Principles

and Procedures. As with all WIOA waivers, ETA does not have the authority to waive provisions in appropriations laws, Cost Principles, or the FAR.

Requested Waiver: Waiver of the requirement under WIOA sec. 129(a)(4) and 20 CFR 681.410 that the State and workforce areas must spend not less than 75 percent of youth funds to provide services to out-of-school youth.

Texas seeks a waiver of the requirement that the State and local workforce areas spend a minimum of 75 percent of youth formula funds on youth workforce activities for out-of-school youth (OSY). The State indicates that youth funding would be better spent on helping in-school youth impacted by Hurricane Harvey. ETA approves this waiver on the condition that Texas submits, and ETA accepts, the following items as part of the fully developed waiver plan the state will submit:

- A description of the impact of Hurricane Harvey on the OSY population and how this population will continue to be served.
- A justification for shifting a portion of resources from serving OSY to youth in school.
- Assurance that local areas will continue to track services, expenditures, and performance metrics for OSY.

Approval of this waiver applies only to disaster-impacted local areas; it does not apply to all local areas in the state. With these conditions, the Department approves a reduction in the 75 percent OSY expenditure minimum for statewide funds spent on statewide youth activities to 50 percent.

Requested Waiver: Waiver of 20 CFR 681.580(c) under WIOA sec. 129(c)(2)(1), which requires that all youth participants receive some form of follow-up services for a minimum of 12 months.

As stated below, ETA grants a waiver for the 14 program elements, which includes follow-up services. Therefore, a disaster-impacted local area is not required to provide this program element to its youth participants. Further, the hurricane-impacted local areas may use the flexibility provided at 20 CFR 681.580 to not provide follow-up services for youth participants if such participants cannot be located or contacted due to the hurricane. It states that “follow-up services must be provided to all participants for a minimum of 12 months unless the participant declines to receive follow-up services or the participant cannot be located or contacted.” In such cases, local areas must document that follow-up services were not provided because participants could not be located or contacted due to the hurricane. The ETA Dallas Regional Office is available to provide technical assistance on flexibilities to meet the State’s needs.

Requested Waiver: Waiver of the requirement that local programs provide each of the 14 youth program elements at WIOA sec. 129(c)(2) as options available to youth participants affected by the disaster.

Texas requests a waiver of the requirement to make available all 14 youth program elements to disaster-impacted youth participants and allow disaster-impacted local areas and those local areas serving youth from disaster areas to focus on the youth services most needed. ETA grants this waiver to provide flexibility in services to youth in areas impacted by the hurricane.

Requested Waiver: Waiver to permit the state to exclude individuals affected by the disaster from the calculation of State and local performance measures identified in WIOA secs. 116(b) and (c).

Texas requests a waiver to remove disaster-affected WIOA program participants from State and local performance measures. ETA approves this waiver request for participants who have been displaced from their workforce area because of the disaster or who are unable to participate in planned WIOA activities because of damage to a facility or entity such as a training provider or on-the-job training employer. The current reporting system used for reporting to ETA under WIOA does not allow for a “global exclusions field”; however, ETA has a process for implementing this waiver request using the “Special Project ID” fields in the Participant Individual Record Layout (PIRL).

- Any participants who the State determines have met these criteria must be coded as Special Project ID “48HARV1” in either PIRL elements #105, #106, OR #107 in the file upload to the Workforce Integrated Performance System (WIPS) for the quarterly and annual reports submitted to ETA. Individuals coded using this Special Project ID will be excluded from the WIPS calculations of the primary indicators of performance identified in WIOA section 116(b) and (c). The State is expected to continue to collect and report to ETA the performance indicators for those participants, but they will be excluded from calculations of the State’s overall progress toward established performance goals.
- The State must put a plan in place that describes how the local areas will implement the identification and documentation of the participants who meet these criteria for exclusion from performance calculations.

Requested Waiver: Waiver of the requirements under 20 CFR 681.550 to permit the use of individual training accounts (ITAs) for disaster-impacted in-school youth.

Texas is requesting a waiver of 20 CFR 681.550 to allow disaster-impacted local areas and those local areas serving youth from disaster areas to provide affected in-school youth with ITAs. ETA approves this waiver for disaster-affected local workforce development areas. Local areas must continue to track performance for youth using ITAs.

Requested Waiver: Waiver of the requirement at WIOA sec. 134(c)(3)(C) that training services be provided by providers identified in accordance with WIOA sec. 122.

Texas requests a waiver to allow Boards in disaster-impacted local areas the flexibility to permit instructors and providers that are not on the list of eligible training providers (ETPs) to provide training services for occupations that are now in-demand because of the disaster. WIOA does not provide the Department the authority to grant this request. WIOA

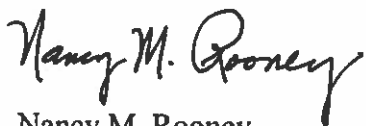
sec. 189(i)(3)(A)(i) explicitly forbids the Department from waiving any provision concerning statutory or regulatory requirements relating to “the eligibility of training providers or participants.” Therefore, the Secretary is unable to grant this waiver.

Extensive flexibility is provided in WIOA and its regulations to permit Local Boards to contract with training providers that are not on the State’s ETP list. Regulations at 20 CFR 680.320 provide that contracts for training services may be used instead of ITAs under five circumstances, including “when the Local WDB determines that it would be most appropriate to contract with an institution of higher education (see WIOA sec. 3(28)) or other provider of training services in order to facilitate the training of multiple individuals in in-demand industry sectors or occupations, provided that the contract does not limit consumer choice.” We encourage the State to explore how it may use this flexibility to meet its current training needs. Further, ETA is available to provide Texas with technical assistance to assess if and how it can streamline its ETP procedures.

Final approval of the waivers for which ETA requested additional information is contingent on ETA’s receipt and review of this information. Texas is also required to provide an update on its full waiver plan to the Dallas Regional Office within 90 days of receipt of this letter. The approval of waivers herein is granted through September 30, 2018, corresponding with the approval period of the State’s Hurricane Harvey NDWG.

The Department is committed to supporting Texas during this difficult time, and the ETA Dallas Regional Office is available for further discussion and to provide technical assistance to the State to support its recovery. Should you need additional flexibility beyond that provided here, we are available to explore options. Please contact the Texas’ Federal Project Officer, Karrie Gericke, at [Gericke.Karrie@dol.gov](mailto:Gericke.Karrie@dol.gov) and (972) 850-4616, if you have additional questions.

Sincerely,



Nancy M. Rooney  
Deputy Assistant Secretary

Enclosure

cc:

Larry E. Temple, Executive Director, Texas Workforce Commission  
Nicholas Lalpui, Regional Administrator, ETA Dallas Regional Office  
Karrie Gericke, Federal Project Officer, ETA Dallas Regional Office

# Texas Workforce Commission

A Member of Texas Workforce Solutions

Andres Alcantar, Chairman  
Commissioner Representing  
the Public

Ruth R. Hughs  
Commissioner Representing  
Employers

Julian Alvarez  
Commissioner Representing  
Labor

Larry E. Temple  
Executive Director

September 21, 2017

The Honorable R. Alexander Acosta  
Secretary  
United States Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210-0002

Dear Secretary Acosta:

On August 25, 2017, Texas took a direct hit from Hurricane Harvey. The severe flooding, storm surge, and damaging winds devastated our coastal communities, leaving Houston—the nation's fourth-largest city—under water and flooding even inland communities far from the coast.

Thirty-nine Texas counties have been declared federal disaster areas. Seven local workforce development areas (workforce areas) have been approved for federal public and individual assistance. Additionally, four counties in four workforce areas with limited or no storm damage have been approved for federal public assistance to help manage the influx of evacuees. Many communities and counties outside the declared disaster areas also have been affected. Hurricane Harvey is likely the costliest natural disaster in Texas history.

The Texas Workforce Commission (TWC) needs increased flexibility to design and deliver workforce services that will allow TWC to respond effectively to the disaster and its consequences for our state's workforce system. Therefore, TWC requests eight Workforce Innovation and Opportunity Act (WIOA) waivers from the Department of Labor (DOL) for use at the state level to benefit workforce areas affected by the hurricane or for use at the local level in disaster-affected workforce areas. TWC bases this request on its experience with similar waivers approved under Hurricanes Ike and Dolly in 2008 and Katrina and Rita in 2005.

The waivers being requested are:

1. Waiver of the language in WIOA §134(b) that limits the use of funds allocated under §§133(b)(2)(A), 133(b)(2)(B), and 133(b)(3) to the required and permissible local employment and training activities described in §§134(c) and 134(d) and limits the use of funds allocated under §128(b) to the youth program elements described in §129(c)(2). A waiver would allow Local Workforce Development Boards (Boards) to request the use of up to 100 percent of workforce area formula-allocated funds to provide the statewide employment and training activities described in §134(a) and the

required and allowable statewide youth activities described in §129(b). *(This waiver request was approved in 2005 for Hurricanes Katrina and Rita.)*

2. Waiver of the limitation on the use of funds for capitalization of business at WIOA §181(e) to permit funds to be used to capitalize small businesses that were affected by Hurricane Harvey, up to \$5,000 per affected business. This waiver would allow the state to assist disaster-affected businesses and create new employment opportunities. The state will ensure that entrepreneurial or microenterprise training is provided for the individuals benefiting from the capitalization. *(This waiver request was approved in 2005 for Hurricanes Katrina and Rita and in 2008 for Hurricanes Ike and Dolly.)*
3. Waiver of the requirement under WIOA §129(a)(4) and 20 CFR §681.410 that the state and workforce areas must spend not less than 75 percent of youth funds to provide services to out-of-school youth. This waiver would apply statewide because the four workforce areas hardest hit by Hurricane Harvey—Workforce Solutions Gulf Coast (which includes Houston), Workforce Solutions Southeast Texas, Workforce Solutions of the Coastal Bend, and Workforce Solutions Golden Crescent—account for approximately one-third of the state’s youth allocation and related performance results. This waiver would allow Boards to extend funding to serve the many in-school youth who have been dislocated by the disaster. This waiver also could be used to support pre-apprenticeship programs and at-risk youth.
4. Waiver of 20 CFR §681.580(c) under WIOA §129(c)(2)(I), which requires that all youth participants receive some form of follow-up services for a minimum of 12 months. Many youth participants may receive services in temporary locations and then return to their homes or move to new locations. The state understands that this waiver would apply only when the 12-month requirement for follow-up services cannot be met because of the movement of disaster-affected youth out of a workforce area. *(This waiver request was approved in 2005 for Hurricanes Katrina and Rita and in 2008 for Hurricanes Ike and Dolly.)*
5. Waiver of the requirement that local programs provide each of the 14 youth program elements at WIOA §129(c)(2) as options available to youth participants affected by the disaster. Such a waiver would allow affected workforce areas to focus on the youth services that are most needed. *(This waiver request was approved in 2005 for Hurricanes Katrina and Rita and in 2008 for Hurricanes Ike and Dolly.)*

6. Waiver to permit the state to exclude individuals affected by the disaster from the calculation of state and local performance measures identified in WIOA §§116(b) and (c). TWC would apply this waiver to participants who have been displaced from their workforce area because of the disaster or are unable to participate in planned WIOA activities because of damage to a facility or entity such as a training provider or on-the-job training employer. The state understands that it must include these participants in various reports and the state's annual Participant Individual Record Layout (PIRL) submissions, using a special notation of the participants' status in the global exclusions field. *(This waiver request was approved in 2008 for Hurricanes Ike and Dolly.)*
7. Waiver of the requirements under 20 CFR §681.550 to permit the use of individual training accounts for disaster-affected in-school youth. This would give Boards the necessary flexibility to use Youth formula funds when appropriate to meet the individual training and employment needs of all youth affected or displaced by the storm. *(This waiver request was approved in 2005 for Hurricanes Katrina and Rita.)*
8. Waiver of the requirement at WIOA §134(c)(3)(C) that training services be provided by providers identified in accordance with WIOA §122, giving Boards in disaster-affected areas the flexibility to permit instructors and providers that are not on the list of eligible training providers—but whom the Boards deem qualified—to provide training services for occupations that are now in-demand because of the disaster.

These waivers will help increase employer engagement, work-based learning strategies, regional collaboration, and access to training in hurricane-impacted areas, all of which are DOL priorities for WIOA. These priorities informed and guided the development of these waivers, and will be a valuable resource that the Texas workforce system can use to provide Texas residents with the support and assistance they desperately need to recover from the devastation of Hurricane Harvey.

We are submitting these requests per the requirements for submission of a waiver plan under WIOA §189(i)(3) and 20 CFR §679.620. As required by 20 CFR §679.620(d)(2), we have determined that there are no state or local statutory barriers. The waiver plan will allow the state to immediately address the disaster-related workforce challenges we face. The precise programmatic outcomes will be negotiated with the Employment and Training Administration's (ETA) regional office within the next three months.

The state will monitor progress and ensure accountability for federal funds connected to these waivers by reviewing monthly expenditure, performance, and other reports submitted by Boards, through regularly scheduled calls or meetings with Board executive directors, through regular contact with the ETA regional office liaisons, and through its monitoring and performance accountability system.



The Honorable R. Alexander Acosta  
Page 4  
September 21, 2017

We have posted the waiver plan on our website for review and comment, and we have consulted Boards and other stakeholders. We appreciate your consideration of these requests and seek an expedited response so that we may move forward with our efforts.

Sincerely,



Larry E. Temple  
Executive Director

cc: Byron Zuidema, ETA Deputy Assistant Secretary, DOL  
Nicholas E. Lalpui, Regional Administrator, Region IV, DOL ETA  
Andres Alcantar, Chairman, Commissioner Representing the Public  
Ruth R. Hughs, Commissioner Representing Employers  
Julian Alvarez III, Commissioner Representing Labor