

**U.S. Department of Labor**

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



May 30, 2024

The Honorable Greg Abbott  
Governor of Texas  
P.O. Box 12428  
Austin, Texas 78711

Dear Governor Abbott:

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 04, 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 Texas will meet the outcomes and implement the measures identified in its plan to ensure accountability agreed to by Texas 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 of 20 CFR 681.550 to allow WIOA individual training accounts (ITAs) for in-school youth (ISY).

ETA Response: ETA conditionally approves, for Program Year (PY) 2024 and 2025, Texas' request to waive the requirement limiting ITAs to only out-of-school youth (OSY), ages 16–24. In addition to these OSY, the State may use ITAs for ISY, ages 16–21. ETA reviewed Texas' 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. Approval of this waiver should not impede the State's efforts to prioritize OSY, including outreach to the OSY population. Prior to implementation of this waiver, the State must update its waiver request to include projected quantifiable outcomes (i.e., for the core indicators under WIOA or shorter-term state-defined indicators) for WIOA participants served under the waiver.

Requested Waiver: Waiver of the performance requirements at WIOA Section 116(c) to allow the State to modify the performance measures used to negotiate local workforce development board performance.

ETA Response: ETA approves, through June 30, 2028, Texas' request to modify the performance measures it uses to negotiate local program performance. ETA reviewed Texas' waiver request and plan and has determined that the requirements requested to be waived impede its ability to implement its plan to improve the workforce development system. Texas must continue to track and report to ETA the WIOA primary indicators of performance and all other required reports.

Requested Waiver: Waiver of the reallocation provisions at WIOA Sections 128(c)(3) and 133(c)(3) to allow the state workforce development board to develop different criteria than required by statute for the reallocation of recaptured funds among local workforce areas.

ETA Response: ETA approves through June 30, 2028, Texas' request to waive the reallocation provisions at WIOA Sections 128(c)(3) and 133(c)(3). Texas may reallocate recaptured funds according to State-developed criteria. ETA reviewed Texas' waiver request and plan and has determined that the requirements requested to be waived impede its ability to implement its plan to improve the workforce development system. Under this waiver, Texas has the discretion to consider additional factors described in its waiver plan in determining local workforce development area eligibility for reallocation of recaptured funds. As such, Texas may only consider:

- The amount available for redistribution;
- Amount requested by the local board;
- Demonstrated need for and ability to use additional funds to serve low-income individuals, public assistance recipients, dislocated workers, and unemployment insurance claimants;
- A demonstrated capacity to effectively expend funds to address the need for services in the workforce development area;
- A local board's established plan for working with at least one of the Governor's industry clusters as specified in the local workforce area's plan; and
- The local workforce area's performance during the current and prior performance years.

Texas must make public its reallocation procedure and policy, as well as any future changes to the policy. Please note that the approved waiver only applies to reallocation and not recapture. ETA requires the State to track implementation results and outcomes of this waiver.

Texas 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: Courtney Arbour, Director, Texas Workforce Commission  
Nicholas Lalpui, ETA Regional Administrator – Dallas Region  
Felecia Blair, ETA Federal Project Officer

# **The State of TEXAS**

## **WAIVER REQUEST 1**

### **Youth Individual Training Accounts**

#### **1. The statutory and/or regulatory requirements the State would like to waive**

TWC is seeking a waiver of the requirement under WIOA rule at 20 CFR §681.550, which limits the use of individual training accounts (ITAs) for youth participants to out-of-school youth (OSY) ages 16 to 24. TWC is seeking a waiver of this rule to extend the use of ITAs to in-school youth (ISY).

#### **2. Actions the State has taken to remove state or local barriers**

There are no state or local statutory or regulatory barriers that would impede implementation of the requested waiver.

#### **3. State strategic goal(s) and Department of Labor priorities (e.g. expansion of apprenticeship, improved employer engagement, etc.) supported by the waiver**

This request is for a statewide waiver to grant ISY ages 16–21 the same participant choice options that OSY have by allowing workforce area staff to use ITAs when appropriate to provide ISY with education and training.

On September 20, 2022, DOLETA approved this waiver request for Program Years (PY) 2022 and 2023 (July 1, 2022, through June 30, 2024). Of the ISY receiving training services, 35 percent in PY '21 and 47 percent in PY'22 were funded through ITAs.

Boards currently use or have used ITAs to fund training for ISYs enrolled in the following programs:

- Welding and welding technology
- Nursing, including CNA, LVN, and RN
- TTDR 500 Tractor Trailer
- Pre-apprenticeship programs, including plumbing and electrical
- HVAC
- Accounting
- Emergency Medical Technician

Boards view this waiver as an opportunity to promote apprenticeship programs and the use of pre-apprenticeship standards, with a focus on nontraditional industries and occupations. This waiver will also help ISY living in rural workforce areas to overcome the unique economic and employment challenges facing rural and often remote Texas communities.

Once a youth enrolls in a WIOA program as an ISY, the youth maintains ISY status until they exit the program. Excluding ISY from receiving ITAs undermines WIOA's goals to expand program options, increase program flexibility, and enhance customer choice. DOL states in the preamble to the WIOA Final Rule that ISY age 18 or older may access ITAs through the adult program. This is problematic in that it excludes ISY from entering ITA-funded educational and training programs that may be critical to ISY who drop out or are at risk of dropping out of school. Youth caught in this gap are susceptible to leaving the workforce program and not achieving the education, training, and certifications that develop the skills employers require and that lead to economic self-sufficiency.

Successful program participation most often results in individuals who exit and no longer require TWC's services. However, some participants continue to need services. These individuals are best served not by exit and re-enrollment in adult programs, but by continued service through the current program and with help by staff who know the individual and their needs.

This waiver would permit Boards to provide certain ISY with ITAs. Such flexibility would provide workforce area staff with the necessary flexibility to use youth formula funds, when appropriate, to meet the individual training and employment needs of certain at-risk ISY participants without delays. Such delays may be caused by untimely procurement processes to contract with training providers through standard youth channels. Without access to ITAs for these youth, Boards may need to contract with a school for delivery of one program to a single individual. Boards would be required to track performance for ISYs using ITAs.

Five of Texas' 28 Boards used this flexibility to fund ISY in training during 2019. More than 25 ISY participants benefitted from ITA-funded (dual-credit, apprenticeship, or stand-alone) training programs that focused on skilled trades such as nursing and other health care careers. Additionally, seven more Boards had plans to implement strategies using ITA-funded trainings in early 2020. These programs largely focus on dual-credit and CTE programs through secondary schools, as well as engagement with youth in need of financial assistance who do not qualify for other financial aid programs.

Approval of this waiver request would allow TWC to meet the following state goals:

- **Increase ISYs' access to educational and training programs:** Providing Boards with the flexibility to use ITAs to provide education and training for ISY would increase the number of available workforce opportunities that are provided to youth and help at-risk ISY pursue education and training that would lead to meaningful work and economic self-sufficiency.
- **Decrease delays in service delivery:** By providing the flexibility to use the programs that are made available through the statewide Eligible Training Provider List (ETPL) for all youth, Boards will be able to connect students to necessary trainings. Delays caused by procurement may result in participants missing enrollment deadlines and being required to wait a full semester to begin training programs.

This waiver request aligns with DOL's policy priorities in that it:

- increases youths' access to and opportunities for the education, training, employment, and support services that they need;
- ensures that at-risk ISY do not fall into a regulatory gap that could prevent them from receiving the education and training necessary to secure meaningful work and economic self-sufficiency; and supports WIOA's goals to expand program options, increase program flexibility, and enhance customer choice.

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

TWC projects the following programmatic outcomes resulting from implementation of this waiver:

- 40 percent of in-school youth participating in occupational training will have ITAs.
- The number of training providers serving youth will increase by at least 5 percent in the next 12 months, and these providers will be registered on the ETPL.
- 63 percent of in-school youth enrolled in ITA-funded training will earn a credential, which is an improvement from the 60 percent goal in Program Year 2022 for all youth.
- 60 percent of in-school youth will have measurable skill gains, 5 percentage points higher than the 55 percent goal in Program Year 22 for all youth.

Beginning in 2021, TWC began the process of updating and replacing The Workforce Information System of Texas (TWIST), Texas' workforce case management system. In TWIST, staff were able to enter ITA-connected training services and information in multiple areas. TWC's new system, which was implemented for program participants on April 15,

2024, includes distinct service codes for ITA-funded training activities. This small change will allow TWC to more accurately report future enrollments and ITA-funded activities for youth and other participants.

#### **5. Individuals, groups, or populations benefiting from the waiver**

ISY who drop out of school or who are at risk of dropping out of school.

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

Upon DOL's approval of this waiver request, TWC will communicate the waiver allowance to Boards and workforce system partner programs. TWC will monitor progress under this waiver by reviewing monthly performance reports that are submitted by the Boards, through regularly scheduled conference calls with Board executive directors, and through the agency's monitoring and performance accountability system. TWC will report waiver outcomes in the state's WIOA Annual Report. If the state requests renewal of this waiver, then TWC will provide the most recent outcomes data available.

#### **7. Assurance of State's posting of the request for public comment and notification to affected Local Workforce Development Boards**

TWC included this waiver request as part of the agency's 2024–2027 WIOA Combined State Plan when the plan was presented for public comment from December 14, 2023, to January 13, 2024.

Before posting the plan for public comment, TWC notified all Boards and sought their input regarding this waiver request.

No public comments related to this waiver were received during the 30-day comment period.

### **WAIVER REQUEST 2**

#### **Local Performance Accountability Flexibility**

##### **1. The statutory and/or regulatory requirements the State would like to waive**

TWC is seeking a waiver from WIOA §116(c) pertaining to local performance accountability measures for Subtitle B.

##### **2. Actions the State has taken to remove state or local barriers**

There are no state or local statutory or regulatory barriers that would impede implementation of the requested waiver.

### **3. State strategic goal(s) and Department of Labor priorities (e.g. expansion of apprenticeship, improved employer engagement, etc.) supported by the waiver**

TWC requests a waiver from WIOA §116(c) to allow greater flexibility when contracting performance measures with the Boards to allow TWC to promote the further integration of services within Workforce Solutions Offices.

Specifically, TWC is requesting the flexibility to modify Board performance measures. Under this proposed waiver, TWC will continue to track and report the core indicators of performance at both state and Board levels as required by WIOA §116; however, the waiver will give TWC the continued flexibility to select among the statutory Title I measures and develop other measures to be used in Board contracts. TWC is interested in developing Board-contracted measures that support the integration and minimization of local administrative burden while making the statutorily prescribed measures more useful to the Boards.

On September 20, 2022, DOLETA approved this waiver request for PY'22-'23 (July 1, 2022, through June 30, 2024). Prior to WIOA, under the Workforce Investment Act (WIA), TWC had a similar waiver that provided flexibility in selecting and developing local performance accountability measures. This waiver was in place for more than 10 years and allowed TWC to use a set of integrated outcome measures that were aligned with the old WIA common measures but were applicable to all participants, regardless of program. Through the Local Accountability Flexibility Waiver, TWC was able to improve program integration and streamline the agency's performance accountability model.

However, the implementation of WIOA resulted in the loss of the waiver as it reintroduced a focus on "siloes" program outcomes rather than purely customer-focused considerations into the Texas workforce system. WIOA's requirement to contract separate indicators of performance by program unnecessarily siloes service delivery and may lead to the development of a barrier to integration that TWC was able to largely remove under the prior waiver.

While this proposed waiver would provide TWC with the flexibility to select Board performance measures, WIOA §116(g) will continue to provide sanctions for a Board's failure to meet any of the WIOA performance measures. Although the approval of this waiver would provide TWC with additional flexibility in determining which measures to formally contract to the Boards, accountability will not be impacted, as TWC would still apply the sanction provisions of WIOA §116(g) to those measures that are formally contracted.

Approval of this waiver request would allow TWC to meet the following state goals:

- **Increase the integration of services to customers:** Boards are responsible for implementing many federal and state workforce development programs, which enables them to integrate service delivery; however, programs are partially driven by how performance is measured. Programs with different measures of success require different means of management. Rather than focusing on employers' needs and finding job seekers to fill those needs, staff must focus on the specific outcome expectations of the program that funds the services that the customer receives.
- **Better alignment in performance accountability at the state, local, and service provider levels:** Because Boards are responsible for numerous workforce development programs, the coenrollment of customers in multiple programs is becoming increasingly commonplace. Therefore, TWC believes that the most effective way to evaluate Boards and to promote accountability is to use integrated performance measures.
- **Providing greater flexibility to Boards in designing and implementing one-stop services:** By eliminating program-specific measures and applying integrated performance measures across all programs, TWC will promote service-delivery designs that are based on the needs of its customers, including employers, rather than siloed program requirements.

This waiver request aligns with DOL's policy priorities in that it:

- supports employer engagement by promoting service-delivery designs that are based on employer needs;
- improves job and career results by identifying employers' needs and connecting employers with job seekers to meet those needs;
- promotes integrated case management across multiple programs, as WIOA envisions; and
- maintains and enhances state and local performance accountability.

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

The approval of this waiver would result in the continued administrative relief that would remove barriers to coenrollment and promote more integrated case management across multiple programs, as WIOA envisions. TWC strongly supports the concept that programs with similar outcome objectives should be measured in a similar fashion.

Approval of this waiver would continue to allow the streamlining of administrative processes, resulting in maximized resources focused on employment outcomes. This



request is for a waiver that is administrative, rather than programmatic. While TWC believes that WIOA participants will benefit from this waiver, the benefit is indirect; therefore, specific programmatic outcomes cannot be identified.

#### **5. Individuals, groups, or populations benefiting from the waiver**

- Employers
- Job seekers
- Incumbent workers
- Workforce area staff

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

Upon DOL's approval of this waiver request, TWC will communicate the waiver allowance to Boards and workforce system partner programs. TWC will monitor progress under this waiver by reviewing monthly performance reports submitted by the Boards, through regularly scheduled conference calls with Board executive directors, and through the agency's monitoring and performance accountability system. TWC will report waiver outcomes in the state's WIOA Annual Report. If the state requests renewal of this waiver, TWC will provide the most recent outcomes data available.

#### **7. Assurance of State's posting of the request for public comment and notification to affected Local Workforce Development Boards**

TWC included this waiver request as part of the agency's 2024–2027 WIOA Combined State Plan when the plan was presented for public comment from December 14, 2023, to January 13, 2024.

Before posting the plan for public comment, TWC notified all Boards and sought their input regarding this waiver request.

No public comments related to this waiver were received during the 30-day comment period.

### **WAIVER REQUEST 3**

#### **Reallocation Waiver**

##### **1. The statutory and/or regulatory requirements the State would like to waive**

TWC is seeking a waiver from the provisions of WIOA §128(c)(3) and §133(c), regarding reallocation among local areas. This waiver would provide flexibility to TWC in redistributing funds among workforce areas.

## **2. Actions the State has taken to remove state or local barriers**

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

This waiver request was first approved on November 17, 2010 under WIA and then in 2016 under WIOA. The waiver was most recently approved on September 20, 2022, for PY22-23 which has provided TWC with the flexibility to redistribute recaptured funds to workforce areas where the greatest potential may be realized, thus ensuring a more effective and more efficient use of federal funds. TWC will continue to apply this strategy and monitor outcome success.

In June 2006, TWC adopted rules to integrate the agency's deobligation and reallocation policies for all Board-administered funds, thus establishing consistent procedures to apply to all workforce funds administered by the Boards, in support of a fully integrated system.

- The deobligation of funds involves a multilevel review process:
  - Expenditures and performance are reviewed on a monthly basis.
  - If expenditures are trending low, TWC staff provide technical assistance to the Boards.
  - Boards are given an opportunity to get expenditures back on track.
  - If it becomes clear that Boards will not be able to meet the expenditure benchmark, discussions regarding the possible deobligation of funds occurs and TWC receive concurrence from the Board executive directors that they will not be able to use the funds.
  - The Commission takes final action in a public meeting.
- The reallocation of funds involves a multilevel review process:
  - Expenditures and performance are reviewed on a monthly basis.
  - If expenditures are trending high, TWC staff provides technical assistance to the Boards:
    - Boards are given an opportunity to explain why expenditures appear to be high.

- Boards may identify that the numbers of participants to be served is higher than anticipated and additional funds are needed.
- Using performance reports, TWC staff verify that the number of participants is consistent with the Board's explanation of need.
- The Commission takes final action in a public meeting.

This process has worked well for several years with all Board-administered funds. The same process for reallocation would be used for WIOA funds upon approval of the waiver.

### **3. State strategic goal(s) and Department of Labor priorities (e.g. expansion of apprenticeship, improved employer engagement, etc.) supported by the waiver**

TWC requests to continue this waiver of the WIOA statutes relating to the redistribution of recaptured local funds and proposes to base the redistribution of WIOA funds on TWC's allocation rules (40 TAC §§800.51-800.75). TWC ensures that financial reporting will be consistent with current DOLETA requirements and that federal funds will be effectively managed for maximum service provision and program performance.

Approval of this waiver request would allow TWC to continue meeting the following state goals:

- **Redistribution of recaptured funds to workforce areas based on factors established by TWC to ensure that funds are redistributed to workforce areas with the greatest need:** TWC will determine the amounts to be redistributed to workforce areas based on factors such as:
  - requested amount;
  - demonstrated need for and ability to use additional funds to serve low-income individuals, public assistance recipients, dislocated workers, and unemployment insurance claimants;
  - demonstrated capacity to expend the formula funds;
  - a Board's established plan for working with at least one of the governor's industry clusters, as specified in the Board's plan; and
  - performance in the current and prior program years.
- **Facilitation of maximum expenditure of recaptured federal funds:** TWC seeks to redistribute workforce funds to workforce areas that have achieved not only targeted expenditure levels but have also established performance targets. The redistribution of funds based solely on whether a workforce area achieves its

expenditure target does not address performance issues, such as whether the workforce area has met employers' needs for a highly skilled and job-ready workforce.

- **Improvement of administrative efficiencies:** Approval of this waiver will serve to minimize administrative processes and the costs of contracting by using similar redistribution procedures that support workforce system integration.

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

The statutory reallocation requirements can be fulfilled; however, the amount of funds available for reallocation may be so small that it is cost prohibitive. By using TWC's allocation rules for the redistribution of funds, the agency can ensure that federal funds will be more effectively and efficiently managed for maximum service provision and program performance. Approval of this waiver may not result in significantly higher performance outcomes, but it will provide the opportunity for recaptured funds to be redistributed to workforce areas where the greatest potential impact may be realized. This waiver will streamline administrative practices, allowing for greater efficiency in meeting the workforce development needs of employers and job seekers. Furthermore, it will enhance the quality of services in those workforce areas that have demonstrated consistent performance outcomes. Approval of this waiver will result in a reduction of unnecessary administrative processes.

#### **5. Individuals, groups, or populations benefiting from the waiver**

Workforce areas that provide quality services will have access to additional resources to meet the needs of employers, job seekers, and incumbent workers. Additionally, the waiver will allow TWC to continue to promote the cost benefits of improved administrative efficiencies, encouraging Boards to further leverage resources within the workforce areas. As a result, TWC will increase services provision for disadvantaged populations and individuals with multiple barriers to employment.

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

Upon DOL's approval of this waiver request, TWC will communicate the waiver allowance to Boards and workforce system partner programs. TWC will monitor progress under this waiver by reviewing monthly performance reports submitted by the Boards, through regularly scheduled conference calls with Board executive directors, and through the agency's monitoring and performance accountability system. TWC will report waiver outcomes in the state's WIOA Annual Report. If the state requests renewal of this waiver, then TWC will provide the most recent outcomes data available.

## **7. Assurance of State's posting of the request for public comment and notification to affected Local Workforce Development Boards**

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Before posting the plan for public comment, TWC notified all Boards and sought their input regarding this waiver request.

No public comments related to this waiver were received during the 30-day comment period.