



JUN 21 2019

The Honorable Peter Ricketts
Governor of Nebraska
Office of the Governor
Post Office Box 94848
Lincoln, Nebraska 68509

Dear Governor Ricketts:

Thank you for your waiver requests received on March 25, 2019, regarding certain statutory and regulatory provisions of the Workforce Innovation and Opportunity Act (WIOA) and the accompanying plan to improve the statewide workforce development system (copy enclosed). This letter provides the Employment and Training Administration's (ETA) official response to the State's requests and memorializes that Nebraska will meet the outcomes and implement the measures identified in its plan to ensure accountability agreed to by Nebraska 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 associated with the requirement at WIOA Section 129(a)(4)(A) and 20 CFR 681.410 that states expend 75 percent of all Governor's reserve and local area formula youth funds on out-of-school youth (OSY) and allow calculation of the OSY expenditure rate at the state level rather than within each local area.

ETA Response: The State's request to waive the requirement that states expend 75 percent of all Governor's reserve and local formula youth funds on OSY is approved. ETA reviewed the State's waiver request and plan and has determined that the requirements requested to be waived impede the ability of Nebraska to implement its plan to improve the workforce development system. Therefore, ETA approves the requested waiver through June 30, 2020. Nebraska may lower the target rate for Governor's reserve and local formula youth funds to 50 percent. ETA also approves Nebraska's request to allow the State to calculate the 50 percent OSY expenditure requirement at the state level only.

Requested Waiver: Waiver to expand the definition of a recognized postsecondary credential at WIOA Section 3(52) to include a certain threshold of hours worked, a threshold of classroom instruction, and/or a certain number of postsecondary credits earned as part of a Registered Apprenticeship.

ETA Response: WIOA does not govern how completion of a Registered Apprenticeship is determined. Therefore, the WIOA waiver authority does not permit ETA to grant this request. In the absence of a waiver to the definition, ETA believes that the actions described below will help address the State's concerns and is ready to support your efforts to expand apprenticeships.

Under existing flexibilities, Nebraska can count components of either a non-registered apprenticeship (such as on-the-job or other employer-sponsored training) or Registered Apprenticeship toward the credential measure. For example, if an apprenticeship results in a recognized postsecondary credential, such as an industry-recognized certificate or certification, a license recognized by the State involved or Federal Government, or an associate or baccalaureate degree, then Nebraska can count it toward the credential attainment measure. For the Registered Apprenticeships for which Nebraska has concerns, ETA will work with the State to create the component parts (stackable or interim credentials) that will meet the WIOA definition of recognized postsecondary credential during the course of a longer-term training program. Furthermore, Nebraska can take the challenge of incentivizing investment in longer-term credentials into account when negotiating annual performance targets with ETA and its local areas.

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: The State's request to waive the obligation of ETPs to collect and report performance data on all students in a training program is approved through June 30, 2020. ETA reviewed the State's waiver request and plan and has determined that the requirements requested to be waived impede the ability of Nebraska to implement its plan to improve the workforce development system. The State must provide information regarding how the Governor will take into account the outcomes of all students in an ETP program of study, with respect to their employment and earnings, as required for the demonstration of continued eligibility in 20 CFR 680.460(f)(1)(iii) and WIOA Section 122. The State will continue to collect and report data for all WIOA-funded participants in accordance with all statutory and regulatory requirements, including WIOA Sections 116 and 122, and as specified at 20 CFR 677.230 and 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.

Requested Waiver: Waiver of the one-stop operator requirements at WIOA Section 121(d) and 20 CFR 678.600.

ETA Response: The State withdrew this request on May 21, 2019, and indicated that it intends to submit a revised request in the near future.

Requested Waiver: Waiver of 20 CFR 678.315, which prohibits the existence of stand-alone Wagner-Peyser Employment Service affiliate American Job Centers (AJCs) and requires the physical presence of one or more required one-stop partners more than 50 percent of the time (excluding the partner administering local veterans' employment representatives, disabled veterans' outreach program specialists, or unemployment compensation programs).

ETA Response: ETA is unable to grant this waiver request. The Secretary's waiver authority extends to statutory and regulatory provisions related to WIOA Title I Subtitles A, B, and E, as

well as the Wagner-Peyser Act Sections 8 – 10. The particular provisions the State seeks to waive implement Section 3(d) of the Wagner-Peyser Act and, thus, are outside of ETA's waiver authority. ETA is available for further discussion and to provide technical assistance to the State to support achieving its goals, including expanding service delivery in rural areas.

Requested Waiver: Waiver of the definition of new local area for the purposes of minimum allocation at 20 CFR 683.125.

ETA Response: ETA is unable to grant this waiver request. WIOA Section 189(i)(3)(A)(i) prohibits the Secretary from waiving the definition of local areas, establishment of local areas, and allocation of funding to local areas. However, the State may use its statewide set-aside funds to assist with redesignation of local areas as provided by 20 CFR 679.280.

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, 2019, and 2020 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,



Molly E. Conway
Acting Assistant Secretary

Enclosure

cc:

John Albin, Commissioner, Nebraska Department of Labor

Christine Quinn, ETA Chicago Regional Administrator, Employment and Training Administration

Christopher Mendoza, Federal Project Officer, Employment and Training Administration

**State of Nebraska
Nebraska Department of Labor
WIOA Waiver Requests**

The State of Nebraska seeks approval of the following statutory waivers pursuant to WIOA Sec. 189(i)(3), 20 CFR §§ 679.600 – 679.620, and TEGL 8-18. If approved, the waivers will assist Nebraska to further develop its workforce system while continuing to focus on implementation of a demand-driven system.

I. **Waiver of 75 percent out-of-school youth expenditure requirements**

a. **Background**

Nebraska has demonstrated its commitment to emerge as a national leader in providing in-school youth (ISY) with a variety of opportunities aimed at increasing high school graduation rates, attainment of postsecondary credentials, and quality employment in in-demand occupations.

Registered Apprenticeship

In 2016, Nebraska received an *ApprenticeshipUSA Accelerator Grant* to support rapid expansion of Registered Apprenticeship programs in Nebraska. Nebraska increased employer participation in Registered Apprenticeship by 31 percent during the grant period (June 2016 – May 2018). Employer participation is projected to increase to approximately 52 percent by April 2019. In addition to expanding Registered Apprenticeship in Nebraska, the Nebraska Department of Labor (NDOL), in partnership with the US Department of Labor State Office of Apprenticeship, has developed and continues to develop Registered Apprenticeship programs for youth, ages 16 and older, through collaboration with public and private high schools and employers in Nebraska. The youth Registered Apprenticeship programs allow high school juniors and seniors to simultaneously further their educational attainment and earn wages. This provides participating youth with significant advantages as they embark on their career pathways and they will earn on average of \$300,000 more than non-apprentices during their careers.¹

Prior to November 2017, Nebraska employers were not participating in youth Registered Apprenticeship. As of February 2019, nine public and private high schools have been approved as Registered Apprenticeship non-sponsoring intermediaries. By March 2019, Nebraska will have 11 businesses participating, and participation of four additional businesses is under development. NDOL projects that 12 additional youth Registered Apprenticeship programs will be developed during 2019. Nebraska is also expanding youth Registered Apprenticeship through the *Pathways to STEM Apprenticeship Grant Project* in partnership with the Nebraska Department of Education (NDE) and the Nebraska Department of Economic Development (NDED). This project provides for expansion of competency-based computer science occupations in 20 counties in rural Northeast Nebraska.

Pre-apprenticeship

In addition to the expansion of Registered Apprenticeship in Nebraska, NDOL has developed a pre-apprenticeship program that is scheduled for implementation in 2019. The *Pre-apprenticeship Pilot Program 2019* is a framework that incorporates pre-apprenticeship criteria

¹ United States Department of Labor, “Apprenticeship Toolkit, Advancing Apprenticeship as a Workforce Strategy, Frequently Asked Questions,” <https://www.dol.gov/apprenticeship/toolkit/toolkitfaq.htm> [accessed March 4, 2019]

and guidance issued by the Department, proven methodologies and practices from the states of Wisconsin and Oregon, and work-based learning practices from and requirements of the Nebraska Department of Education (NDE) to insure the integrity, quality, and rigor of the Pilot Program.

Under the Pilot Program, NDOL recognizes two pre-apprenticeship models, quality pre-apprenticeship and standard apprenticeship. Pre-apprenticeship programs based on the quality model are those that meet the standards and criteria defined by the Department in TEN 13-12 and adhere to NDOL requirements.² Pre-apprenticeship programs based on the standard model are those that adhere to NDOL requirements but are not associated with Registered Apprenticeship programs. Under the Pilot Program, characteristics of quality and standard pre-apprenticeship programs vary based upon the program site chosen by the sponsoring employer:

- school-based programs:
 - located primarily at educational institutions, such as middle schools, high schools, and community colleges;
 - allow for industry exploration, education, and preparation in a focused, classroom environment and include sponsoring employer site visits or exploratory activities; and
 - cooperation and collaboration between sponsoring employers and the educational institutions, which promotes program adherence to NDE regulations.
- work-based programs:
 - allow sponsoring employers exclusive control regarding the schedule, concepts, skills, and occupations explored; and
 - while not required, employment of is strongly recommended to insure retention of the pre-apprentices following program completion;
- community-based programs:
 - provide sponsoring employers with great flexibility in program design and components;
 - allow for leveraging of community resources to create robust programs that target specific populations or address other needs which can be supported by hosting community organizations; and
 - particularly useful if multiple sponsoring employers want to utilize similar educational and training standards.

JAG Nebraska

Nebraska's commitment to increasing high-school graduation rates, attainment of postsecondary credentials, and quality employment in in-demand occupations for ISY is also evident through its implementation of JAG Nebraska. Nebraska began implementation of the Jobs for America's

² NDOL's requirements include procedural and documentation criteria.

Graduates (JAG) model in the fall of 2018; and in January 2019, three sites were launched with nearly 75 youth enrolled. JAG Nebraska was established to help high-barrier youth graduate from high school and make successful transitions to postsecondary education or meaningful employment. JAG Nebraska follows JAG national standards which have been empirically proven over 38 years and continuously updated to meet the evolving needs of today's youth. JAG Nebraska serves high-barrier youth through an in-school, for-credit, research-backed course consisting of more than 80 competencies leading to successful outcomes. These competencies focus on building workplace skills and life skills necessary to graduate high school and obtain employment or transition to another positive post-graduation outcome (military enlistment, college enrollment, etc.). The combination of workplace readiness and life skills training, coupled with intensive supportive services, has proven successful for more than 1.25 million youth in 35 states since 1980.³ These high-barrier youth, often labeled "at-risk" and unlikely to complete high school, have beat the odds with the support of JAG. The JAG Class of 2017 had a graduation rate of greater than 95 percent.⁴ In addition to high graduation rates, JAG graduates are 2.3 times more likely to be employed full time compared to the general population of 18- to 20-year olds.⁵ Further, research conducted by Drexel University on post-high school employment outcomes for JAG graduates shows significant gains in weekly earnings, higher hourly wages, and better non-wage compensation, including health insurance and retirement benefits.⁶

Impact

Together, Registered Apprenticeship, pre-apprenticeship, and JAG provide all but two of the 14 Title I youth program elements (refer to Table 1). However, given the 25 percent limitation on ISY spending, the impact of these evidence-supported and proven programs for ISY is limited. Waiver approval would increase ISY spending and allow more ISY to access Registered Apprenticeship, pre-apprenticeship, and JAG and achieve positive outcomes. Additional ISY funding made available through approval of this waiver could also be utilized to provide ISY with incentive payments in recognition of achieving predetermined benchmarks and goals that align with Title I youth programs and participation in Registered Apprenticeship and pre-apprenticeship programs and JAG, which will likely increase ISY program participation, retention, and completion. In addition to serving more ISY, approval of this waiver will also benefit Nebraska's economy through the development of a diverse and skilled workforce. Participating employers across the country are reporting impressive numbers regarding Registered Apprenticeship completion rates (approximately 91 percent) and retention of apprentices (approximately 87 percent at the three-year mark post-apprenticeship).

³Jobs for America's Graduates, "The JAG Advantage, Taking JAG to the Next Level, JAG 2017 – 2018 Annual Report," <http://www.jag.org/annualreport> [accessed February 27, 2019]

⁴Ibid.

⁵Jobs for America's Graduates, "The JAG Edge: Graduation and Jobs...Second to None! JAG 2016 – 2017 Annual Report," <http://www.jag.org/annualreport> [accessed February 27, 2019]

⁶ Ibid.

Table 1. Alignment of Registered Apprenticeship, Pre-apprenticeship and JAG with WIOA Title I Youth Program Elements

WIOA Title I Youth Program Elements	Registered Apprenticeship	Pre-apprenticeship	JAG Nebraska
1. Tutoring, study skills training, instruction and dropout prevention	X	X	X
2. Alternative secondary school and dropout recovery services	-	-	X
3. Paid and unpaid work experience	X	X	X
4. Occupation skills training	X	X	-
5. Education offered concurrently with workforce preparation	X	X	X
6. Leadership development opportunities	-	-	X
7. Supportive services	-	-	X
8. Adult mentoring	X	-	X
9. Comprehensive guidance and counseling	-	-	-
10. Financial literacy education	-	-	-
11. Entrepreneurial skills training	-	-	X
12. Services that provide labor market information	-	-	X
13. Postsecondary preparation and transition activities	X	X	X
14. Follow-up services	-	-	X

In combination, expansion of Registered Apprenticeship, establishment of youth Registered Apprenticeship programs, development of the Pre-apprenticeship Pilot Program 2019, and implementation of JAG Nebraska result in enhanced services for ISY, as well as OSY, leading to increased high-school graduation rates, attainment of postsecondary credentials, and quality employment in in-demand occupations. In addition, these efforts (a) foster stronger relationships among Nebraska's workforce system partners, including communities, secondary and postsecondary schools, and parents and families and (b) increase the impact of shared goals to support Nebraska youth, and (c) build a strong talent pipeline.

b. Statutory and/or regulatory requirements to be waived

Nebraska is seeking a waiver of requirements established under WIOA Sec. 129(a)(4)(A) and 20 CFR § 681.410, which mandate that not less than 75 percent of funds allotted to states under WIOA Sec. 127(b)(1)(C), reserved under WIOA Sec. 128(a), and available for statewide activities under WIOA Sec. 129(b) must be used to provide youth workforce investment activities for OSY; and available to local workforce development areas (local areas) under WIOA Sec. 129(c) must be used to provide youth workforce investment activities for OSY.

1. Nebraska is seeking a waiver of the requirement to expend 75 percent of youth formula funds on OSY. Nebraska is requesting that the required OSY expenditure rate be reduced to 50 percent.
2. Nebraska is seeking a waiver of the requirement that local area OSY spending meet the 75 percent minimum expenditure rate. Nebraska is requesting that the required local area OSY expenditure rate be reduced to 50 percent, as described in item 1 above. In addition,

Nebraska is requesting that the 50 percent OSY expenditure rate be calculated at the state-level rather than by each local area's rate of expenditure.

3. Nebraska is seeking a waiver of the limitation that no more than 25 percent of local area youth formula funds be expended on ISY workforce investment activities. Nebraska is requesting that the maximum local area ISY expenditure rate be increased to 50 percent, as described in item 1 above. In addition, Nebraska is requesting that the 50 percent ISY expenditure rate be calculated at the state-level rather than by each local area's rate of expenditure.
4. Nebraska is seeking a waiver of the requirement to expend 75 percent of the Governor's reserve of youth formula funds on OSY statewide workforce investment activities. Nebraska is requesting that this percentage-expenditure requirement be eliminated to allow flexibility of funding for special projects that meet the vision and goals of Nebraska.

c. Actions undertaken to remove state or local statutory or regulatory barriers

Currently, there are no state or local statutory or regulatory barriers to implementing the requested waiver. State law, regulations, and policy statements are in compliance with current Federal law.

d. State strategic goal

Nebraska's strategic goal under this waiver is to increase the number of youths participating in evidence-based programs that result in positive outcomes for ISY and OSY, including high school graduation, participation in postsecondary education, career development, and employment. This goal aligns with two of the four goals established in Nebraska's Combined State Plan:

- increasing workforce participation by:
 - expanding access to education, training, and employment services; and
 - preparing job seekers for occupations that provide family-sustaining wages;
- promoting economic self-sufficiency among Nebraska's job seekers and reducing public-assistance dependency by increasing postsecondary credential attainment, employment, retention, and earnings to:
 - meet the skill requirements of employers; and
 - enhance the productivity and competitiveness of Nebraska.

e. Projected programmatic outcomes resulting from waiver implementation

The projected programmatic outcomes during the performance of this waiver:

- 10 ISY participating in youth Registered Apprenticeship programs statewide;
- 10 ISY participating statewide in pre-apprenticeship programs approved under Nebraska's Pre-apprenticeship Pilot Program 2019;

- 10 percent statewide increase in Q2 and Q4 retention rates among Title I youth participating in Registered Apprenticeship programs compared to Title I youth not participating in such programs;
- participation in JAG by 10 ISY; and
- high school graduation, participation in postsecondary education, or employment by at least 75 percent of ISY participating in JAG.

f. Alignment with Department policy priorities

WIOA places an emphasis on pre-employment education and development as well as access to work-based learning opportunities. As stated in TEN 31-16, Registered Apprenticeship is a (a) valuable work-based training opportunity that can provide youth with academic and workplace skills and (b) proven model of job preparation that combines paid on-the-job training and related instruction to progressively increase workers' skill levels and wages. In addition, TEN 13-12 states that through a variety of unique program designs and approaches, pre-apprenticeship programs can be adapted to meet the needs of diverse populations being trained, the various employers and sponsors they serve, and specific opportunities within the local labor market. Further, national JAG outcomes further align with Department policy priorities; the national JAG class of 2017 had a 77 percent full-time employment rate 12 months after high school graduation.⁷ Approval of this waiver aligns with the Department's policy priorities, through increased services for ISY leading to greater numbers of skilled youth available to enter the workforce, by supporting:

- continued expansion of Registered Apprenticeship;
- implementation of Nebraska's Pre-apprenticeship Pilot Program 2019; and
- further implementation of JAG Nebraska.

g. Individuals, groups, or populations benefitting from the waiver

Approval of this waiver would enhance Nebraska's ability to serve ISY, including those with basic skills deficiency and those who are English language learners, offenders, in or have aged out of foster care, pregnant or parenting, have a disability, or require additional assistance to complete education or secure employment.⁸ During the 2017 – 2018 school year, Nebraska had more than 320,000 individuals enrolled in school, with approximately 78,000 of those students enrolled in high schools.⁹ There are 119 high schools in Nebraska with a free- or reduced-lunch usage rate of more than 50 percent,¹⁰ which equates to approximately 39,000 students, all of whom could benefit from the approval of this waiver.

⁷Jobs for America's Graduates, "The JAG Advantage, Taking JAG to the Next Level, JAG 2017 – 2018 Annual Report," <http://www.jag.org/annualreport> [accessed February 27, 2019]

⁸ 20 CFR § 681.220(d)

⁹ Nebraska Department of Education, "Statistics and Facts about Nebraska Schools 2017 – 2018," https://cdn.education.ne.gov/wp-content/uploads/2018/11/Statsfacts_20172018-for-pdf1.pdf [accessed February 27, 2019]

¹⁰ Nebraska Department of Education, "2017/2018 Free and Reduced Lunch counts by School,"

https://cdn.education.ne.gov/wp-content/uploads/2017/11/2017-18_Free_and_Reduced_Lunch_Counts_by_School.xls [accessed February 27, 2019]

h. Monitoring of waiver implementation and outcome

NDOL will monitor progress and ensure accountability for use of Federal funds in connection with this waiver by collecting and reviewing monthly expenditure and performance data and through regular contact with Nebraska's Region V Federal Project Officer. In addition, NDOL will utilize a pre-existing framework to develop relevant performance data reports to assist impacted Title I service providers with effectively monitoring the agreed-upon, objectively measurable, projected programmatic outcomes associated with this waiver. NDOL will utilize internal data reporting available in its statewide case management and Federal performance reporting system of record (NEworks, a Geographic Solutions product) and leverage data available through the state's full PIRL 9173 data files. These reports will be provided to impacted Title I service providers quarterly, utilizing the program year model; specifically, the administrative entities responsible for oversight of those service providers. Those administrative entities will be responsible for the implementation, coordination, and monitoring of the aforementioned outcomes.

i. Notice to Local Boards and Public Comment

On March 8, 2019, NDOL published this waiver request on its public website at <https://dol.nebraska.gov/EmploymentAndTraining/LCRWP/WIOA/ManualsPlansReports>. NDOL also published a "Notice of Public Comment" in major newspapers statewide regarding this waiver request. A 10-day comment period was allowed. No public comments disagreeing with this waiver were received.

II. Waiver to expand definition of “recognized postsecondary credential”

a. Background

Registered Apprenticeship is one of the most effective strategies for engaging employers and improving outcomes for the job seekers. As a training model that combines paid on-the-job training and related instruction in a skilled occupation, Registered Apprenticeship helps workers get jobs, keep jobs, and increase their skills and earnings. Like traditional on-the-job training (OJT), Registered Apprenticeship is an important form of work-based training available through the one-stop delivery system and should be used as a strategy to train and employ job seekers. Registered Apprenticeships offer job seekers immediate employment opportunities that usually pay higher wages and offer continued career growth. Registered Apprenticeships can and should be utilized throughout the one-stop delivery system as a means of leveraging resources to better serve regional needs. Similarly, OJT and other types of employer-sponsored training, such as pre-apprenticeship programs, and incumbent worker and customized training, are effective strategies for improving outcomes for job seekers and provide opportunities for fostering increased employer engagement, implementing sector strategies, and encouraging industry partnerships, as these types of training allow employers to train their employees while they continue to be productive members of the workforce.

Credentials earned through Registered Apprenticeship programs are portable and recognized nationwide. The primary recognized postsecondary credential earned through Registered Apprenticeship is a certificate of completion issued by the Department’s Office of Apprenticeship. Many Registered Apprenticeship programs are multiple years in length and are not competency-based or hybrid programs with interim credentials that may be earned during program. Because of the duration of such Registered Apprenticeships, Title I programs are apprehensive regarding use of Title I funds to support the Registered Apprenticeship training model, because doing so may negatively impact local area performance. There is similar apprehension over use of Title I program funds to support incumbent worker training and customized training, and to a lesser extent OJT, that doing so may also negatively impact local area performance. NDOL anticipates similar concerns over use of Title I funds to support the pre-apprenticeship training model established under Nebraska’s Pre-apprenticeship Pilot Program 2019.

b. Statutory and/or regulatory requirements to be waived

The State of Nebraska is seeking a waiver:

- to expand the definition of recognized postsecondary credential, which is defined under WIOA Sec. 3(52) as an industry-recognized certificate or certification, a certificate of completion of an apprenticeship, a license recognized by the State involved or Federal government, or an associate or baccalaureate degree; and
- of the requirements outlined in WIOA Sec. 116(b)(2) and 20 CFR § 677.155(a) as they relate attainment of recognized postsecondary credentials during participation in a Title I program or within one year after program exit.

Nebraska requests that the state and local areas be allowed to include one or more of the following in documentation of attained recognized postsecondary credentials:

- Registered Apprenticeship program components that have been completed during a program year, such as:
 - attainment of college credits, not just a two-year credential or certificate, associate degree, or other measure that takes more than one year to earn;
 - USDOL-recommended 144 contact hours of related instruction; or
 - USDOL-recommended minimum of 2,000 hours of on-the-job training;
- components of pre-apprenticeship programs approved under Nebraska's Pre-apprenticeship Pilot Program 2019 that have been completed during a program year, such as:
 - attainment of college credits, not just a two-year credential or certificate, associate degree, or other measure that takes more than one year to earn;
 - for school-based programs, a minimum of 12 industry-based activities, experiences, or projects (or a minimum of 12 contact hours) in the classroom; or
 - for work- and community-based programs, a minimum of 24 contact hours of industry-focused exploration and preparatory activities at the worksite;
- components of OJT, incumbent worker training, customized training, or other work-based training that have been completed during a program year, such as:
 - successful completion of OJT or similar milestones evidenced by a satisfactory or better progress report from an employer who is providing training;
 - successful passage of an exam that is required by an employer for a particular occupation; or
 - progress in attaining technical or occupational skills, such as satisfactory completion of knowledge-based exams.

The components described above maintain the key qualities of a recognized postsecondary credential as defined in WIOA Sec. 3(52), including industry-recognized, portable, third-party validated or accredited, and stackable.

c. Actions undertaken to remove state or local statutory or regulatory barriers

Currently, there are no state or local statutory or regulatory barriers to implementing the requested waiver. State law, regulations, and policy statements are in compliance with current Federal law.

d. State strategic goal

Nebraska's strategic goals under this waiver are to:

- increase local area utilization of Registered Apprenticeship and pre-apprenticeship programs and OJT;
- increase local area utilization of incumbent worker training and customized training as methods for fostering increased employer engagement;
- increase statewide participation among Title I program participants in Registered Apprenticeship and pre-apprenticeship programs and OJT; and
- support state and local area performance on the WIOA credential attainment performance indicator.

These goals align with the state's goal in Nebraska's Combined State Plan regarding increased workforce participation by:

- expanding access to education, training, and employment services; and
- preparing job seekers for occupations that provide family-sustaining wages.

e. Projected programmatic outcomes resulting from waiver implementation

The projected programmatic outcomes during the performance of this waiver:

- 10 additional Title I program participants placed in Registered Apprenticeship programs statewide;
- 10 Title I program participants placed in pre-apprenticeship programs statewide;
- 30 additional Title I program participants placed in OJT statewide;
- local area implementation of three incumbent worker training or customized training initiatives;
- 10 percent statewide increase in performance for effectiveness in serving employers as measured under Approach 1 (retention with the same employer) and Approach 2 (repeat business customers);
- statewide Q2 and Q4 retention rates are 10 percent higher among Title I program participants placed in Registered Apprenticeship programs, employing pre-apprenticeship programs, and OJT than statewide Q2 and Q4 retention rates for participants not placed in such programs; and
- 20 percent increase in the statewide credential attainment rate for Title I program participants placed in Registered Apprenticeship and pre-apprenticeship programs and OJT.

f. Alignment with Department policy priorities

WIOA places an emphasis on pre-employment education and development as well as access to work-based learning opportunities. As stated in TEN 31-16, Registered Apprenticeship is a (a) valuable work-based training opportunity that provides job seekers and workers with academic and workplace skills and (b) proven model of job preparation that combines paid on-the-job training and related instruction to progressively increase the worker's skill levels and wages. In addition, TEN 13-12 states that through a variety of unique program designs and approaches, pre-apprenticeship programs can be adapted to meet the needs of diverse populations being trained, the various employers and sponsors they serve, and specific opportunities within the local labor market. Further, TEGL 19-16 states that WIOA provides enhanced access and flexibility for work-based training options such as OJT, incumbent worker training, and customized training. Approval of this waiver aligns with the Department's policy priorities and allows the Nebraska to increase and support utilization of Registered Apprenticeship and pre-apprenticeship programs, OJT, and other types of employer-sponsored training, such as incumbent worker training and customized training.

g. Individuals, groups, or populations benefitting from the waiver

This waiver impacts all Title I programs and their support of Registered Apprenticeship and pre-apprenticeship programs and OJT and implementation of incumbent worker training and customized training initiatives by incentivizing local area investment in these proven work-based training models. This waiver also impacts sponsors of Registered Apprenticeship and pre-apprenticeship programs as well as other employers providing work-based training through programmatic support of the development of a pipeline of skilled workers.

h. Monitoring of waiver implementation and outcome

NDOL will monitor progress and ensure accountability for use of Federal funds in connection with this waiver by collecting and reviewing monthly expenditure and performance data and through regular contact with Nebraska's Region V Federal Project Officer. In addition, NDOL will utilize a pre-existing framework to develop relevant performance data reports to assist impacted Title I service providers with effectively monitoring the agreed-upon, objectively measurable, projected programmatic outcomes associated with this waiver. NDOL will utilize internal data reporting available in its statewide case management and Federal performance reporting system of record (NEworks, a Geographic Solutions product) and leverage data available through the state's full PIRL 9173 data files. These reports will be provided to impacted Title I service providers quarterly, utilizing the program year model; specifically, the administrative entities responsible for oversight of those service providers. Those administrative entities will be responsible for the implementation, coordination, and monitoring of the aforementioned outcomes.

i. Notice to Local Boards and Public Comment

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III. Waiver of all-student performance reporting requirement for Eligible Training Providers

a. Background

Under WIOA Secs. 116 and 122 and 20 CFR §§ 677.230 and 680.400 – 680.530, Eligible Training Providers (ETPs) must report program performance data with respect to all individuals engaging in a program of study. While Nebraska recognizes the value and importance of monitoring ETP performance, requiring ETPs to produce data on all students places undue burden on ETPs to collect, enter, and report excessive data. This is especially burdensome when ETPs have many students, of whom only a small percentage are Title I program participants. The US Departments of Education and Labor acknowledge this burden in their response to comments regarding 20 CFR § 677.230 in the preamble of the WIOA Joint Final Rule by stating "the Departments are cognizant of the reporting burden the ETP performance report places on ETPs and do not want to place additional burden on these entities." However, changes to the regulatory text were not made.

Nebraska and its ETPs are concerned that providing data on all individuals engaging in a program of study included on Nebraska's ETPL may conflict with the requirements established under the Family Educational Rights and Privacy Act (FERPA), which protects the privacy of student education records. Generally, schools must have express written permission from the parent or eligible student to release any information from a student's education record.¹¹ Releasing student information on individuals who are not Title I program participants, without their express written consent, for purposes of ETP performance reporting may be a violation of Federal law and compromise students' personally identifiable information.

While ETPL participation among sponsors of Registered Apprenticeship programs has increased in Nebraska by 133.3 percent, participation among other training providers has dropped drastically. At initial implementation of Nebraska's ETPL under WIOA, NDOL held a technical assistance call for ETPs who had participated in the ETPL under the Workforce Investment Act (WIA). Great concern was voiced during that call regarding the all-student performance reporting requirement. Subsequent to the call, Nebraska experienced an overall reduction of 70.2 percent in ETP participation under WIOA from that under WIA and an overall loss of 65.5 percent of its approved ETP programs, as described in Table 1.

Table 1. Overall Impact of ETP WIOA Performance Reporting Requirements on Nebraska's ETPL

Nebraska's ETPL	WIA	WIOA	Numerical change	Percentage change
Participating ETPs	124	37	-87	-70.2
Approved programs	2,042	705	-1,337	-65.5

¹¹ 34 CFR § 99.30

Participation in Nebraska's ETPL among all 4-year universities and colleges that had participated as ETPs under WIA dropped by 84.4 percent and among 4-year universities and colleges located in Nebraska by 76.2 percent, as described in Table 2.

Table 2. Impact of ETP WIOA Performance Reporting Requirements on Participation among 4-year Universities and Colleges

Nebraska's ETPL	WIA	WIOA	Numerical change	Percentage change
All participating 4-year universities and colleges	32	5	-27	-84.4
Nebraska's participating 4-year universities and colleges	21	5	-16	-76.2

Reduced participation among all 4-year universities and colleges that had participated as ETPs under WIA resulted in a loss of 92.1 percent of approved programs and among 4-year universities and colleges located in Nebraska in the loss of 91.5 percent of approved in-state programs, as described in Table 3. These losses have significantly limited consumer choice for Title I program participants statewide.

Table 3. Impact of ETP WIOA Performance Reporting Requirements on Consumer Choice

Nebraska's ETPL Approved Programs	WIA	WIOA	Numerical change	Percentage change
Programs offered by all participating 4-year universities and colleges	877	69	-808	-92.1
Programs offered by Nebraska's participating 4-year universities and colleges	814	69	--745	-91.5

The University of Nebraska withdrew 307 WIA-approved programs from inclusion on the ETPL, and all three of the 4-year colleges in the Nebraska State College System withdrew from participation entirely, resulting in a net loss of 447 programs previously offered by these ETPs, as described in Table 4.

Table 4. Impact of ETP WIOA Performance Reporting Requirements on Rural Consumer Choice

University and College Systems Approved Programs	WIA	WIOA	Numerical change	Percentage change
University of Nebraska	317	10	-307	-96.8
Chadron State College	60	0	-60	-100.0
Peru State College	20	0	-20	-100.0
Wayne State College	50	0	-50	-100.0

The end result of the nearly total withdrawal of the University of Nebraska System and total withdrawal of the Nebraska State College System is an extreme limitation upon consumer choice for Title I program participants in the rural areas of the Greater Nebraska Workforce Development Area, which is served by the University of Nebraska System and the Nebraska State College System, as well as the participants in Greater Lincoln and Greater Omaha Workforce Development Areas. Of the top 20 emerging demand occupations in Nebraska (refer to Table 5),

occupational skills training is available for all but two of those occupations at or through the University of Nebraska System and Nebraska State College System (refer to Table 6). Without the involvement of the state universities and colleges, consumer choice for Greater Nebraska's rural Title I program participants is limited to Nebraska's community colleges, of which there are just six, and private postsecondary career schools operating in or near those rural areas, unless the participant is willing to commit to a significant commute or relocate for occupational skills training to the metropolitan areas of Nebraska.

Table 5. Top 20 emerging demand occupations based on percent change in employment levels, 2016 - 2026¹²

SOC	SOC Title	2016 Estimated Employment	2026 Projected Employment	Numeric Change	Percent Change
49-9081	Wind Turbine Service Technicians	120	229	109	90.8
15-1122	Information Security Analysts	681	938	257	37.7
31-2011	Occupational Therapy Assistants	202	270	68	33.7
15-1132	Software Developers, Applications	5,135	6,748	1,613	31.4
15-2041	Statisticians	220	288	68	30.9
31-2021	Physical Therapist Assistants	709	925	216	30.5
15-2031	Operations Research Analysts	789	1,019	230	29.2
29-1071	Physician Assistants	1,001	1,288	287	28.7
29-1131	Veterinarians	874	1,095	221	25.3
29-1123	Physical Therapists	1,845	2,311	466	25.3
13-1161	Market Research Analysts and Marketing Specialists	3,375	4,195	820	24.3
13-2052	Personal Financial Advisors	1,499	1,853	354	23.6
13-2072	Loan Officers	3,077	3,801	724	23.5
11-3031	Financial Managers	2,881	3,544	663	23.0
29-1122	Occupational Therapists	1,144	1,402	258	22.6
29-1171	Nurse Practitioners	1,211	1,476	265	21.9
49-9021	Heating, Air Conditioning, and Refrigeration Mechanics and Installers	2,240	2,708	468	20.9
21-1014	Mental Health Counselors	1,108	1,338	230	20.8
23-2011	Paralegals and Legal Assistants	1,301	1,570	269	20.7
21-1011	Substance Abuse and Behavioral Disorder Counselors	641	773	132	20.6

¹² Nebraska Department of Labor, NWorks, Labor Market Data, Download Center, "High Wage, High Skill, High Demand (H3) Occupations," <https://neworks.nebraska.gov/gsipub/index.asp?docid=1165> [accessed December 20, 2017]

Table 6. Occupational Skills Training for Top 20 Emerging Demand Occupations through the University of Nebraska System and Nebraska State College System

SOC	SOC Title	University of Nebraska System	Chadron State College	Peru State College	Wayne State College
49-9081	Wind Turbine Service Technicians	-	-	-	-
15-1122	Information Security Analysts	X	X	X	X
31-2011	Occupational Therapy Assistants	X	X	X	X
15-1132	Software Developers, Applications	X	X	X	X
15-2041	Statisticians	X	X	X	X
31-2021	Physical Therapist Assistants	X	X	X	X
15-2031	Operations Research Analysts	X	X	X	X
29-1071	Physician Assistants	X	X	X	X
29-1131	Veterinarians	X	X	X	X
29-1123	Physical Therapists	X	X	X	X
13-1161	Market Research Analysts and Marketing Specialists	X	X	X	X
13-2052	Personal Financial Advisors	X	X	X	X
13-2072	Loan Officers	X	X	X	X
11-3031	Financial Managers	X	X	X	X
29-1122	Occupational Therapists	X	X	X	X
29-1171	Nurse Practitioners	X	X	X	X
49-9021	Heating, Air Conditioning, and Refrigeration Mechanics and Installers	-	-	-	-
21-1014	Mental Health Counselors	X	X	X	X
23-2011	Paralegals and Legal Assistants	X	X	X	X
21-1011	Substance Abuse and Behavioral Disorder Counselors	X	X	X	X

b. Statutory and/or regulatory requirements to be waived

Nebraska is seeking a waiver of requirements of WIOA Secs. 116 and 122 and 20 CFR §§ 677.230 and 680.400 – 680.530 mandating the collection and reporting of performance data on all students participating in training programs listed on the state's ETPL.

c. Actions undertaken to remove state or local statutory or regulatory barriers

Currently, there are no state or local statutory or regulatory barriers to implementing the requested waiver. State law, regulations, and policy statements are in compliance with current Federal law.

d. State strategic goal

NDOL's strategic goals under this waiver are to (a) increase and enhance consumer choice for Nebraska's Title I program participants and (b) develop and maintain strong partnerships among training providers and Nebraska's statewide one-stop delivery system.

These goals align with the goal in Nebraska's Combined State Plan regarding increased workforce participation by:

- expanding access to education, training, and employment services; and
- preparing job seekers for occupations that provide family-sustaining wages.

e. Projected programmatic outcomes resulting from waiver implementation

The projected programmatic outcomes during the performance of this waiver:

- 50 percent increase in the total number of ETPs participating in Nebraska's ETPL;
- participation in Nebraska's ETPL by:
 - Chadron State College, Peru State College, and Wayne State College (Nebraska State College System colleges), which operate in rural areas of the Greater Nebraska Workforce Development Area;
 - Concordia University, Hastings College, and Midland University, which operate outside of the Omaha, Lincoln, and Grand Island metropolitan areas;
 - Creighton University, Nebraska Methodist College, and University of Nebraska – Omaha, which operate in the Omaha metropolitan area;
 - Nebraska Wesleyan University, Union College, and University of Nebraska – Lincoln, which operate in the Lincoln metropolitan area;
 - University of Nebraska – Kearney, which operates near the Grand Island metropolitan area; and
 - Nebraska College of Technical Agriculture in Curtis (part of the University of Nebraska System), which operates near North Platte;
- improved consumer choice based on the addition of 100 or more approved programs to the ETPL; and
- elimination of the burden placed upon ETPs regarding the resources required to meet performance reporting requirements established under WIOA, allowing them to focus more time and resources on producing successful outcomes for Title I program participants, as well as non-WIOA-funded students.

f. Alignment with Department policy priorities

WIOA Secs. 107(d)(10)(E) and 134(c)(3)(F) require that training services be provided in a manner that maximizes consumer choice in the selection of ETPs, as does TEGL 19-16. Approval of this waiver allows NDOL to insure and maximize consumer choice for Title I program participants with regard to training services.

g. Individuals, groups, or populations benefitting from the waiver

Individuals, groups, and populations benefitting from this waiver include:

- Title I program participants, especially those in the rural areas of the Greater Nebraska Workforce Development area, through enhancement of consumer choice;
- local workforce development boards and local area staff, as they strive to meet their obligations regarding consumer choice;
- ETPs through the elimination of the burden regarding the resources required to meet performance reporting requirements; and
- NDOL as it works to:
 - insure and maximize consumer choice for Title I program participants; and
 - develop and maintain strong partnerships among training providers and Nebraska's statewide one-stop delivery system.

h. Monitoring of waiver implementation and outcome

NDOL will monitor progress in connection with this waiver through utilization of its pre-existing framework for dissemination of Nebraska's ETPL. NDOL will work with Nebraska's Region V Federal Project Officer to identify a reasonable method for taking into account the outcomes of all students in an ETP program of study.

i. Notice to Local Boards and Public Comment

On March 8, 2019, NDOL published this waiver request on its public website at <https://dol.nebraska.gov/EmploymentAndTraining/LCRWP/WIOA/ManualsPlansReports>. NDOL also published a "Notice of Public Comment" in major newspapers statewide regarding this waiver request. A 10-day comment period was allowed. No public comments disagreeing with this waiver were received.

IV. Waiver of the one-stop operator requirement

a. Background

Under WIOA Sec. 121(d) and 20 CFR § 678.600 the one-stop operator carries out the role of coordinating the delivery of services among partner programs and agencies in one-stop centers. While Nebraska recognizes the importance of coordinating programmatic elements at one-stop centers and across the one-stop delivery system, the cost burden of contracting with and competitively selecting a one-stop operator is too great on Nebraska's three local areas and the customers each serves.

Nebraska receives a very low amount of WIOA Title I funding compared to other states having similar population density. This is due to the way the WIOA allotment formulas are outlined under WIOA Secs. 127(b)(1)(C)(ii), 132(b)(1)(B)(ii), and 132(b)(2)(B)(ii). Because of the heavy dependency of these formulas on unemployment rate-related criteria, Nebraska with its consistently low unemployment rate receives WIOA allotments that are considerably lower than states having similar population density. For example, based on 2010 Census estimates, the populations of Nebraska (1,826,341), New Mexico (2,059,179), and West Virginia (1,852,994) were all very similar. However, Nebraska received considerably less Title I funding compared to New Mexico and West Virginia (based on the allotment formula) even though program oversight requirements and program coordination requirements are the same for all three states. WIOA allotments for all three states for Program Year (PY) 2018 are outlined in Table 1.

Table 1. Comparison of Nebraska's PY 2018 Title I Funding to 2 States with Similar Population Density

State	Adult ¹³	Dislocated Worker ¹⁴	Youth ¹⁵
Nebraska	\$2,103,279	\$2,400,347	\$2,656,124
New Mexico	\$8,910,525	\$13,681,869	\$9,176,874
West Virginia	\$5,815,863	\$7,507,754	\$5,837,010

Requirements under WIOA Sec. 121(d) for a one-stop operator remain consistent across all local areas nationwide regardless of the amount of funding each local area receives. There are many expectations laid out in WIOA Sec. 121(d) for the one-stop operator and as such, the costs of having a separate entity carry out those duties are burdensome. For a local area that receives limited funding and/or serves a large geographic area, hiring a separate entity to carry out the one-stop operator duties puts an unnecessary financial burden on the local area. Because one-stop operator costs are funded through program dollars rather than administrative dollars, these costs take away opportunities from the local area to better serve its customers.

Nebraska has at least one local area (Greater Nebraska Workforce Development Area) that utilizes nearly 10 percent of its programmatic budget on a one-stop operator contract. The annual amount for that contract is \$144,199.26. For PY 2018, this local area received only \$1,701,508. After its 10 percent administrative costs are taken off, it was left with roughly \$1,531,357 for programmatic costs across its adult, dislocated worker, and youth programs. Because the one-stop operator contract is paid out of program funding, this means 9.42 percent of its operating program budget is dedicated to these duties.

¹³ TEGL 16-17, Change 1

¹⁴ Ibid.

¹⁵ TEGL 16-17

This local area's active enrollments from across the adult, dislocated worker, and youth programs have dropped substantially since this contract went into place. These drops in enrollment numbers can be attributed at least in part to the reduction in available program funding across the local area's Title I programs. The total active participant counts from the quarter preceding the contract (Q4 PY 2016) was 606. For the most recent quarter (Q2 PY 2018) the total active participant count was 532. This drop of 74 active participants is reflective of the average cost per participant across all programs for the local area as compared to the loss in program funding from the one-stop operator contract.

b. Statutory and/or regulatory requirements to be waived

Nebraska is seeking a waiver of the one-stop operator requirements of WIOA Sec. 121(d) and 20 CFR § 678.600, which require that each local area have a separate entity carrying out its one-stop operator duties. Nebraska is not seeking a waiver of the duties associated with the role of the one-stop operator. TEGL 15-16 clearly states that the competitive selection process for one-stop operators cannot be waived for local areas. Nebraska's waiver is seeking to allow local areas to develop a plan to utilize local area administrative staff and/or service provider staff to carry out the duties of the one-stop operator stated under WIOA Sec. 121(d).

c. Actions undertaken to remove state or local statutory or regulatory barriers

Currently, there are no state or local statutory or regulatory barriers to implementing the requested waiver. State law, regulations, and policy statements are in compliance with current Federal law.

d. State strategic goal

Nebraska's strategic goals under this waiver are to (a) increase Title I funding spent on workforce investment and employment and training activities for program participants by removing additional expenditures for local areas and (b) utilize existing personnel already funded under Title I program funding to carry out the responsibilities of the one-stop operator. These goals align with the state's goal in Nebraska's Combined State Plan regarding increased workforce participation by:

- expanding access to education, training, and employment services; and
- preparing more job seekers for occupations that provide family-sustaining wages.

e. Projected programmatic outcomes resulting from waiver implementation

The projected programmatic outcomes during the performance of this waiver:

- increases in the number of participants being served under the adult, youth, and dislocated worker programs statewide due to an increase in the availability of program funds for workforce investment and employment and training activities, specifically Nebraska expects to serve, at a minimum, 50 additional participants with this waiver if implemented across its three local areas; and
- decreases in the number of individuals put on waitlists by local areas due to a lack of available funds under the adult, youth, and/or dislocated worker programs, specifically Nebraska expects to decrease the number of individuals waitlisted by at least 10 percent.

f. Alignment with Department policy priorities

WIOA Sec. 121(d) outlines the roles and responsibilities of the one-stop operator. Nebraska will continue to meet these responsibilities through the usage of local area staff and/or service provider staff taking on these responsibilities. Approval of this waiver allows Nebraska to insure that more Title funding is available for expenditure on workforce investment and employment and training activities.

g. Individuals, groups, or populations benefitting from the waiver

Individuals, groups, and populations benefitting from this waiver include all Title I program participants, training providers, local area staff, and local boards.

h. Monitoring of waiver implementation and outcome

NDOL will monitor progress in connection with this waiver through regular contact with Nebraska's Region V Federal Project Officer. Upon approval of this waiver, NDOL will establish a policy that requires each local area to provide a plan for meeting one-stop operator responsibilities if that area chooses to maximize their budget and improve efficiencies by utilizing local area staff and/or service provider staff to carry out these responsibilities. NDOL will require each local area to submit annual written assurances that the one-stop operator responsibilities described under WIOA Sec. 121(d) are being met. NDOL's State WIOA Monitor will review compliance with WIOA Sec. 121(d), state policy, and the written assurances during regular monitoring of the local area.

i. Notice to Local Boards and Public Comment

On March 8, 2019, NDOL published this waiver request on its public website at <https://dol.nebraska.gov/EmploymentAndTraining/LCRWP/WIOA/ManualsPlansReports>. NDOL also published a "Notice of Public Comment" in major newspapers statewide regarding this waiver request. A 10-day comment period was allowed. No public comments disagreeing with this waiver were received.

V. Waiver of limitation on affiliate site co-location requirements

a. Background

Under 20 CFR § 678.315, where Wagner-Peyser employment services are provided at an affiliate site, there must be at least one or more other partners in the affiliated site with a physical presence of combined staff more than 50 percent of the time the center is open. The partner programs referenced under this provision relate back to the required one-stop partner program defined in 20 CFR § 678.400. However, under 20 CFR § 678.315, the other partner must not be the partner administering local veterans' employment representatives, disabled veterans' outreach program specialists, or unemployment compensation programs. Nebraska believes this provision extends beyond the intent of the law found in WIOA Sec. 303(d) in the manner in which it arbitrarily excludes certain required one-stop partners from counting towards the 50 percent physical-presence requirement. The intent of WIOA Sec. 303(d) is to improve service delivery and ensure that the Wagner-Peyser Employment Service program adequately serves underserved areas throughout the state.

*(d) In order to **improve service delivery**, avoid duplication of services, and enhance coordination of services, including location of staff to **ensure access to services under section 7(a) statewide in underserved areas**, employment service offices in each State shall be co-located with one-stop centers.¹⁶*

The provisions of 20 CFR § 678.315 greatly exceed the co-location requirements contained in WIOA Sec. 303 without providing any legitimate explanation as to why the value of certain required one-stop partners is considered differently than others. The regulation provides that some required one-stop partner programs cannot be counted towards satisfying the co-location requirement even when they are in fact co-located with the Wagner-Peyser Employment Service. This disregard of activities performed by some required one-stop partners is not required to implement WIOA Sec. 303 and is inconsistent with the affiliate site concept of WIOA Sec. 121. In fact, the requirements of 20 CFR § 678.315 work against the concept of affiliate sites offering expanded services to potential participants in underserved areas, particularly rural areas.

WIOA Sec. 121(e)(2)(B)(i) references affiliate sites that "provide 1 or more of the programs, services and activities to individuals" as an integral part of the one-stop delivery system. Nebraska agrees that a stand-alone Wagner-Peyser office that does not operate as an affiliate site is prohibited under WIOA Sec. 303. However, 20 CFR § 678.315 goes far beyond the requirements of WIOA Sec. 303 by excluding local veterans' employment representatives, disabled veterans' outreach program specialists, and unemployment compensation programs from counting towards the 50 percent physical-presence requirement. There is nothing in WIOA Sec. 303 that supports the interpretation of the exclusion of certain programs from counting toward the 50 percent requirement. In fact, 20 CFR § 678.315 as applied to Nebraska will substantially limit access to services for rural Nebraskans in the Greater Nebraska Workforce Development Area. 20 CFR § 678.315 inhibits Nebraska's ability to effectively serve rural areas throughout the state by potentially forcing the closure of affiliate sites where Nebraska does not have the resources to allocate staff from other one-stop partner programs in order to meet the requirements and restrictions established under 20 CFR § 678.315.

Job seekers and employers in 31 of Nebraska's 93 counties are within a one-hour drive of the comprehensive one-stop center(s) in their respective local areas. Job seekers and employers in

¹⁶ WIOA Sec. 303(d); **emphasis added**

the remaining 62 counties, all of which are part of the Greater Nebraska Workforce Development Area, are underserved due to:

- restrictions regarding stand-alone Wagner-Peyser offices;
- budget limitations among required one-stop partners affecting their ability to provide a physical presence at affiliates sites located in the rural areas of the local area; and
- geographic isolation based on the distance to the nearest comprehensive one-stop center and limited or no access to public transportation in rural areas.

While access to virtual services are an option in addressing this need, delivery of virtual services is contingent upon the customer's ability to access technology, which may be limited based on:

- income;
- educational attainment;
- disability;
- English proficiency; or
- homelessness.

The Greater Nebraska Workforce Development Area is one of three local areas in Nebraska. This local area serves less than 900,000 people, distributed throughout 88 counties that cover more than 74,000 square miles. NDOL operates Wagner-Peyser offices in 15 different locations across the state. Of the 15 Wagner-Peyser offices, four are located in the comprehensive one-stop center of the city in which the office is located. Of the remaining 11 Employment Services offices, 10 are located at affiliate sites and one was co-located at an affiliate site but now is not, due to circumstances beyond NDOL's control. That office is in Alliance, which is located in a rural area in the northwest corner of Nebraska. Alliance has a population of approximately 8,500 and is home to a large railyard. Alliance is 53 miles from the nearest affiliate site in Scottsbluff and 274 miles from the nearest comprehensive one-stop center in Grand Island. The Alliance office serves job seekers and employers from for a six-county area in northwest Nebraska. The Alliance office is also responsible for providing services to Chadron, a community with a population of approximately 5,900 residents and home to Chadron State College.

The Alliance office is not a stand-alone Wagner-Peyser Employment Services office within the meaning of WIOA Sec. 303. In addition to the Wagner-Peyser employment services offered there, the Alliance office offers full-time access to unemployment compensation programs, and regularly offers Veterans' services and weekly services under the Reemployment Services and Eligibility Assessment (RESEA) program. Additionally, Title I programs are also offered through this office.

20 CFR § 678.315 creates administrative nightmares in rural areas. In September of 2016, the Department determined that the Alliance office was noncompliant with 20 CFR § 678.315. Consequently, NDOL relocated the Alliance office so that it could co-locate with the Title II program at Western Nebraska Community College (WNCC). Due to its own budgetary restrictions, the WNCC Title II program reduced services at the Alliance affiliate site below the 50 percent threshold required under 20 CFR § 678.315. Even though the WNCC Title II program offers multiple mandatory partner services at the Alliance affiliate site, the site was noncompliant with 20 CFR § 678.315. In order to rectify the situation, the leadership of the Greater Nebraska

Local Workforce Development Area was forced to reduce Title I services in another location in order to increase services at the Alliance affiliate site in order to meet the physical-presence requirements established under 20 CFR § 678.315. This administrative personnel move was needed due to the limited funding this local area receives and can spend on personnel operating its Title I programs. Simply adding another position was not tenable due to budgetary restrictions, instead reducing services to another area was required. This has put an undue burden on this local area in order to keep this office location open to the public and continue to serve rural northwest Nebraska. If the purpose of WIOA Sec. 303 is to improve access to services in underserved areas, then the provisions of 20 CFR § 678.315 are directly contrary to that purpose.

Even though the Alliance affiliate site now complies with 20 CFR § 678.315, it has only been able to do so by putting an administrative burden on the Title I service provider for the local area. Nebraska feels that it had met the letter of the law under WIOA Sec. 303 prior to being forced to make these personnel changes to comply with 20 CFR § 678.315. Absent a waiver, NDOL is faced with the very real possibility of one day closing its Alliance office and failing to effectively serve rural northwest Nebraska. That potential result seems completely inconsistent with the stated intent of Congress in WIOA Sec. 303, to improve services and ensure access to underserved areas.

Nebraska believes it is fully in compliance with WIOA Sec. 303 as enacted by Congress and is asking the Department for a waiver or repeal of the provision of 20 CFR § 678.315.

b. Statutory and/or regulatory requirements to be waived

Nebraska is not seeking a waiver of the requirements of WIOA Sec. 303 or any regulation necessarily adopted to implement WIOA Sec. 303. Nebraska seeks a waiver of the arbitrary determination to exclude certain other one-stop partner programs from being counted towards the co-location requirement of WIOA Sec. 303.

c. Actions undertaken to remove state or local statutory or regulatory barriers

Currently, there are no state or local statutory or regulatory barriers to implementing the requested waiver. State law, regulations, and policy statements are in compliance with current Federal law.

d. State strategic goal

Nebraska's strategic goals under this waiver are to (a) increase services to all Nebraska job seekers and employers in rural and urban settings and (b) continue to provide Wagner-Peyser employment services to rural areas throughout Nebraska where such sites would be considered noncompliant due to a lack of available one-stop partner programs in the area. These goals align with the state's goal in Nebraska's Combined State Plan regarding increased workforce participation by:

- expanding access to education, training, and employment services; and
- preparing more job seekers for occupations that provide family-sustaining wages.

e. Projected programmatic outcomes resulting from waiver implementation

The projected programmatic outcomes during the performance of this waiver:

- increasing the viability of all of Nebraska's rural office locations, including keeping rural office locations open that have struggled to find sufficient one-stop partner programs in the service area, including the Alliance and Sidney affiliate sites;
- continuing to provide services to more than 1,500 job seekers per month and 500 employers per month from the Alliance affiliate site; and
- continuing to provide services to more than 1,000 job seekers per month and 50 employers per month from the Sidney affiliate site.

f. Alignment with Department policy priorities

WIOA Sec. 303(d) outlines the need to improve service delivery and expand access to services in underserved areas. Rural Nebraska is an underserved area. Approval of this waiver allows Nebraska to continue to better serve rural Nebraska and other underserved areas. Ensuring the provision of services to individuals with barriers to employment is a required function of the state workforce development board and local workforce development boards. In the context of this waiver request, geographic isolation is a barrier to employment. Implementation of this waiver will align with this required function of the workforce development boards as a strategy for better meeting the needs of individuals with barriers to employment through leveraging resources and capacity within the local one-stop delivery system.

g. Individuals, groups, or populations benefitting from the waiver

Individuals, groups, and populations benefitting from this waiver include job seekers being served in rural Nebraska; employers operating in geographically isolated rural areas; required one-stop partners that do not have a physical presence in rural Greater Nebraska; the local workforce development board and its ability to effectively serve employers and job seekers, including individuals with barriers to employment, in geographically isolated rural areas; and the state workforce development board and its ability to ensure the provision of services to employers and job seekers, including individuals with barriers to employment, in geographically isolated rural areas.

h. Monitoring of waiver implementation and outcome

NDOL will monitor progress in connection with this waiver through regular contact with Nebraska's Region V Federal Project Officer and monitor implementation of this waiver in the Greater Nebraska Workforce Development Area by:

- collaborating with the local workforce development board on the development and implementation of an action plan for establishment of stand-alone Wagner-Peyser Employment Service offices in key regions of the local area;
- coordinating with the local workforce development board and required one-stop partners to establish a mechanism for use of established stand-alone Wagner-Peyser Employment Service offices on an as-needed basis, based on a reasonable cost allocation methodology; and

- monitoring of local area performance in key regions of the local area where stand-alone Wagner-Peyser Employment Service offices have been established.

Upon approval of this waiver, Nebraska will review its personnel allocation across the state and look for areas where Nebraska can better serve rural communities and underserved locations. This could include not only keeping the Alliance and Sidney affiliate offices open but provide the enhanced ability to reopen previously shuttered offices in areas such as Kearney (population 30,787) and Fremont (population 26,397).

i. Notice to Local Boards and Public Comment

On March 8, 2019, NDOL published this waiver request on its public website at <https://dol.nebraska.gov/EmploymentAndTraining/LCRWP/WIOA/ManualsPlansReports>. NDOL also published a "Notice of Public Comment" in major newspapers statewide regarding this waiver request. A 10-day comment period was allowed. No public comments disagreeing with this waiver were received.

VI. Waiver of local area definition for the purposes of minimum allocation provisions

a. Background

Under WIOA Secs. 128(b)(2), 133(b)(2)(A), and 133(b)(2)(B) and 20 CFR § 683.125(a) – (b) and (d) – (e) for each of the adult, dislocated worker, and youth programs, each local area must receive an allocation amount for a fiscal year that is equal to at least 90 percent of the average allocation amount the local area received for the program for the preceding two fiscal years. Calculation of minimum funding percentages for local area allocations must be performed on a program year basis. If necessary, to comply with the mandated 90 percent minimum local area allocation requirement, funds needed to increase an allocation to a local area are obtained by ratably reducing the funds to be allocated to other local areas. If the funds allotted to Nebraska based on the fiscal year appropriation are not sufficient to meet the 90 percent minimum allocation described above, the amounts allocated to each local area must be ratably reduced.

WIOA Sec. 3(32) defines a local area as “a local workforce investment area designated under section 106, subject to sections 106(c)(3)(A), 107(c)(4)(B)(i), and 189(i).” The purpose of a local area is defined in 20 CFR § 679.220, that it is to “serve as a jurisdiction for the administration of workforce development activities and execution of adult, dislocated worker, and youth funds allocated by the State.”

Designation of a local area occurs under the provisions of WIOA Sec. 106 and 20 CFR § 679.220(b). When the Governor designates a local area, the local area’s geographic boundaries are clearly defined regardless of whether it be an initial or subsequent designation.

There are provisions in regulation regarding the establishment of a new local area.¹⁷

When a new local area is designated under sec. 106 of WIOA the State must develop a methodology to apply the minimum funding provision specified in paragraph (a) of this section to local area allocations of WIOA youth, adult, and dislocated worker funds.

However, neither law nor regulation addresses a situation that may occur when a local area engages in regional planning, to the extent the regional planning works, with other local areas and they come to an agreement on modifying geographic boundaries of multiple local areas. The question then arises: Would each local area maintain its previously designated status as a local area for the purposes of minimum allocation provisions under WIOA Secs. 128(b)(2), 133(b)(2)(A), and 133(b)(2)(B)?

NDOL has worked, on the Governor’s behalf, to realign local area boundaries as part of the process of identification of planning regions. In July and August of 2015, focus groups were held across the state in Omaha, Lincoln, Grand Island, Norfolk, Scottsbluff, and North Platte. More than 250 workforce system representatives attended the focus groups, including state and local workforce development board members, elected officials, employers, community college representatives, one-stop partners, and representatives of economic development entities. Subsequent to the focus groups, Nebraska’s then-proposed planning regions were determined based on analysis of empirical regional economic and labor market data, performed by NDOL’s Office of Labor Market Information. Data analyzed included:

- commuting patterns;

¹⁷ 20 CFR § 683.125(c)

- numbers of employers and jobs supported regionally;
- projections of regional job growth, particularly in H3¹⁸ occupations;
- locations of training facilities;
- targeted industry growth patterns; and
- workforce system service delivery patterns.

Based on that data analysis and related input from the focus groups, NDOL consulted, on the Governor's behalf, with each local area's Chief Elected Official and local workforce development board, as required under WIOA Sec. 102(b)(2)(D), regarding the then-proposed planning regions with a goal realigning local area boundaries with the proposed planning regions. Two of Nebraska's three local areas agreed with the realignment of local area boundaries; one did not. However, all three local areas agreed that the then-proposed planning regions were appropriate and they supported the submission of Nebraska's Combined State Plan with the planning regions identified in the Combined State Plan as originally submitted in 2016.

Nebraska's current local area configuration has been in place since 1983, established under the Job Training Partnership Act. This configuration, particularly in the eastern, most populated portion of Nebraska, has not represented economic or service-delivery patterns for many years. However, under the provisions of WIOA Sec. 106(b)(2) and 20 CFR § 679.250(a), the Governor was required to approve a request for initial designation as a local area under WIOA from any local area that was designated as a local area for purposes of WIA for the two-year period preceding the date of enactment of WIOA; provided the local area performed successfully and sustained fiscal integrity during that two-year period. Because each local area met these criteria and one local area requested its initial designation as a local area continue under WIOA as it had under WIA, Nebraska's local area boundaries remain unchanged. If Nebraska's current local area boundaries, which are more than 35 years old, continue as they are, alignment of the workforce development activities and resources of the local areas with larger regional economic areas and resources through the regional planning activities required under 20 CFR § 679.510 will not occur. Considering the outcome of efforts to realign local area boundaries in 2015, the Governor's ability to realign local area boundaries is practically non-existent as the Chief Elected Officials and local workforce development boards across all three local areas were not collectively ready to do so in 2015 and likely not ready now without the assurances that would be afforded under a waiver that insures the minimum allocation amounts described in this waiver request.

In short, this waiver request is, in part, a solution to eliminate the need for Nebraska's current waiver permitting assignment of a single local area to two planning regions. More importantly, this waiver request provides a solution to the requirement that Nebraska align the workforce development activities and resources of the local areas with larger regional economic areas and resources through the regional planning activities required under 20 CFR § 679.510.

b. Statutory and/or regulatory requirements to be waived

Nebraska is seeking a waiver of the definition of new local area as mentioned 20 CFR § 683.125(c). Nebraska seeks to ensure that when local areas carry out effective regional planning which leads to potential boundary changes among the local areas, through appropriate measures, that such a local area still maintains its legal identity as a local area for all purposes related to the

¹⁸ H3 refers to high wage, high skill, high demand

minimum allocation provisions of WIOA Secs. 128(b)(2), 133(b)(2)(A), and 133(b)(2)(B) when it maintains at least 70 percent of the population previously comprising the local area and/or 60 percent of the counties making up that local area. Nebraska seeks to clarify that a change in local area boundaries, as described in this paragraph, would allow the local area to maintain its identity as an established local area and not be considered a new local area.

c. Actions undertaken to remove state or local statutory or regulatory barriers

Currently, there are no state or local statutory or regulatory barriers to implementing the requested waiver. State law, regulations, and policy statements are in compliance with current Federal law.

d. State strategic goal

Nebraska's strategic goals under this waiver are to (a) increase services to all Nebraska job seeker and employers in rural and urban settings through better alignment of the local area boundaries to reflect better and more efficient service delivery; (b) continue to provide support for regional and local planning throughout the state to develop, align, and integrate service delivery strategies regionally and locally; (c) support the vision, guiding principles, goals, and strategies established in the Combined State Plan; and (d) eliminate the need for Nebraska's current planning region waiver which allows for two local areas to be assigned to a planning region. These goals align with the state's goal in Nebraska's Combined State Plan regarding increased workforce participation by:

- expanding access to education, training, and employment services; and
- preparing more job seekers for occupations that provide family-sustaining wages.

e. Projected programmatic outcomes resulting from waiver implementation

The projected programmatic outcomes for this waiver are:

- increasing service delivery to counties that currently lack WIOA enrollments through better coordination of service areas; specifically, Nebraska seeks to increase the number of counties with at least 1 WIOA participant by at least 10 percent:
 - of Nebraska's 93 counties, 25 counties do not currently have a Title I participant; and 24 counties have only a single Title I participant;
- improving the coordination of services to Title I participants in underserved areas:
 - example: Dodge County has a current enrollment of 8 participants; Nebraska would be able to raise this number by at least 50 percent with a boundary readjustment to allow another local area with a closer administrative headquarters to serve the county;
- elimination of the need for Nebraska's current planning region waiver which allows for two local areas to be assigned to a planning region.

f. Alignment with Department policy priorities

WIOA Sec. 106 defines the requirement to identify regions across the state and carryout planning activities. As part of these planning activities, regions are required to look at such things as

service delivery and local area boundaries. To improve regional planning and the discussion regarding local area boundaries, it is essential that Nebraska is able to guarantee its local areas that they will still qualify as local areas for the purposes of the minimum allocation provisions. WIOA Secs. 121(e)(3) and 303(d) outline the need to improve service delivery and expand access to services in underserved areas. Rural Nebraska is an underserved area. Approval of this waiver allows Nebraska to continue to better serve rural Nebraska and other underserved areas by allowing local areas to consider realigning boundaries without excessive worry over the financial implications of future allocations.

g. Individuals, groups, or populations benefitting from the waiver

Individuals, groups, and populations benefitting from this waiver include job seekers being served in rural Nebraska; employers operating in geographically isolated rural areas; the local workforce development board and its ability to effectively serve employers and job seekers, including individuals with barriers to employment, in geographically isolated rural areas; and the state workforce development board and its ability to ensure the provision of services to employers and job seekers, including individuals with barriers to employment.

h. Monitoring of waiver implementation and outcome

NDOL will monitor progress in connection with this waiver through regular contact with Nebraska's Region V Federal Project Officer and will monitor implementation of this waiver by:

- working with local areas regarding realigned boundaries that reflect changes in economies since local area boundaries were last updated in 1983; and
- providing financial estimates to the local areas regarding potential increases or decreases in allocation amounts based on boundary changes.

i. Notice to Local Boards and Public Comment

On March 8, 2019, NDOL published this waiver request on its public website at <https://dol.nebraska.gov/EmploymentAndTraining/LCRWPMWIOA/ManualsPlansReports>. NDOL also published a "Notice of Public Comment" in major newspapers statewide regarding this waiver request. A 10-day comment period was allowed. No public comments disagreeing with this waiver were received.