



JUN 24 2019

The Honorable Ralph Northam
Governor of Virginia
State Capitol
Third Floor
Richmond, Virginia 23219

Dear Governor Northam:

Thank you for Virginia's waiver requests received on March 28, 2019, regarding certain statutory and regulatory provisions of the Workforce Innovation and Opportunity Act (WIOA) and the accompanying plan to improve the statewide workforce development system (copy enclosed). This letter provides the Employment and Training Administration's (ETA) official response to the Commonwealth's requests and memorializes that Virginia will meet the outcomes and implement the measures identified in its plan to ensure accountability agreed to by Virginia and ETA. This action is taken under the Secretary's authority to waive certain requirements of WIOA Title I, Subtitles A, B, and E, and Sections 8 – 10 of the Wagner-Peyser Act in WIOA section 189(i).

Requested Waiver: Waiver of the obligation of eligible training providers (ETPs) to collect and report on the performance data on all students in a training program at WIOA Sections 116(d)(4)(A) and (B) and 122(d)(2)(A) and 20 CFR 677.230(a)(4) and (5) and 20 CFR 680.430(b)(5).

ETA Response: The Commonwealth'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 Commonwealth's waiver request and plan and has determined that the requirements requested to be waived impede the ability of Virginia to implement its plan to improve the workforce development system. The Commonwealth must provide information regarding how the Governor will take into account the outcomes of all students in an ETP program of study, with respect to their employment and earnings, as required for the demonstration of continued eligibility in 20 CFR 680.460(f)(1)(iii) and WIOA Section 122. The Commonwealth will continue to collect and report data for all WIOA-funded participants in accordance with all statutory and regulatory requirements, including WIOA Sections 116 and 122, and as specified at 20 CFR 677.230 and 680.460. While ETA recognizes the importance of informing consumer choice through the provision of quality data on training outcomes, we also recognize that the systems and willingness to collect the required performance data from providers may discourage training provider participation, which is a critical component of the workforce development system.

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 Governor's reserve and all local formula youth funds on out-of-school youth (OSY).

ETA Response: The Commonwealth's request to waive the requirement that states expend 75 percent of Governor's reserve and all local formula youth funds on OSY is approved. ETA reviewed the Commonwealth's waiver request and plan and has determined that the requirements requested to be waived impede the ability of Virginia to implement its plan to improve the workforce development system. Therefore, ETA approves the requested waiver for Program Years (PYs) 2018 and 2019 (July 1, 2018 through June 30, 2020). Virginia may lower the target rate for Governor's reserve and local formula youth funds to 50 percent.

ETA is available for further discussion and to provide technical assistance to the Commonwealth 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 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:

Megan Healy, Chief Workforce Development Advisor, Commonwealth of Virginia
Leo Miller, Philadelphia Regional Administrator, Employment and Training Administration
Steven Duval, Chief, Division of Workforce Investment, Employment and Training Administration



COMMONWEALTH of VIRGINIA
Office of the Governor

Megan Healy, Ph.D.
Chief Workforce Development Advisor

March 25, 2019

Department of Labor Employment and Training Administration
WIOA Waiver Coordinator
200 Constitution Ave, NW Room S-4203
Washington, DC 20210

The Commonwealth of Virginia, in accordance with TEGL 8-18: Workforce Innovation and Opportunity Act (WIOA) Title I and Wagner-Peyser Act Waiver Requirements and Request Process, respectfully requests the Department of Labor to review and approve the following waiver requests:

- Eligible Training Provider Performance for Non-WIOA Students
- Out-of-School Youth 75 Percent Expenditure Requirement

Sincerely,

A handwritten signature in black ink, appearing to read "Megan Healy".

Megan Healy

CC: Leo Miller, ETA Region 2 Administrator

Commonwealth of Virginia WIOA Waiver Request: Eligible Training Provider Performance for Non-WIOA Students

The Commonwealth of Virginia seeks approval of the following statutory waivers in accordance with the Workforce Innovation and Opportunity Act (WIOA) at Section 189(i)(3) and the WIOA Regulations at 20 Code of Federal Regulation 20 CFR 679.600 thru 679.640. These waiver requests will assist Virginia to further develop its workforce system while continuing to focus on creating a demand-driven system.

Regulatory Requirements to be Waived – Eligible Training Provider Performance for Non-WIOA Students

Virginia requests the consideration of a waiver from the requirements in WIOA, Sections 116 (related to performance) and 122 (related to the Eligible Training Provider List), and at 20 Code of Federal Regulations (CFR) 677.230 and 20 CFR 680.400-680.530. In whole, these regulations constitute a burdensome requirement for training providers for the collection and reporting of performance outcomes for all students, above and beyond WIOA participant students, participating in training programs listed on Virginia's Eligible Training Provider (ETP) system.

Background

Virginia's ETP has been managed by Virginia's WIOA Title I Administrator, Virginia Community College System's Workforce Development Services Division. The system of record for the ETP is the online Virginia Workforce Connection system (<https://www.vawc.virginia.gov>). Local workforce development boards (LWDB) use a paper application process to select training provider training programs for approval for their area. LWDB staff then enter the school's information into the Virginia Workforce Connection so that all LWDBs can access the provider's services. The online ETP listing is especially convenient for those training providers who border multiple local areas and/or provide online services.

Under WIOA Section 116 (d)(4)(A) and 20 CFR 677.23(a)(5), ETPs are required to report performance data on all participants enrolled in a program of study (or the equivalent). While the WIOA Title I Administrator recognizes the value and importance of monitoring provider performance, requiring ETPs to produce data on all individuals, instead of just WIOA-funded participants, places an undue burden on the ETPs to collect and report excessive data. This is especially burdensome when the ETPs have many students of whom only a small percentage are WIOA-funded participants. The U.S. Departments of Labor and Education acknowledge this burden in their response to comment regarding 20 CFR 677.230 in the preamble of the WIOA Final Rules by stating,

“The Departments are cognizant of the reporting burden the ETP performance report places on ETPs and do not want to place additional burdens on these entities.”

However, there was no change to the regulatory text.

Further, ETPs and the WIOA Title I Administrator are concerned that providing data on all individuals participating in a program of study (or the equivalent), instead of only WIOA-funded participants, may conflict with the Family Educational Rights and Privacy Act (FERPA), which

protects the privacy of student educational records. Generally, schools must have written permission from the parent or eligible student to release any information from a student's education record (34 CFR 99.30). Releasing student information on individuals who are not workforce system participants without their explicit consent may be a violation of federal law and compromise their personally identifiable information (PII). Additionally, requiring ETPs to provide data on all individuals instead of WIOA-funded participants may dissuade the institution from participating as a WIOA training provider, and thus significantly limit customer choice.

Several significant challenges remain:

- Reticence for providers to be placed on the ETP given this reporting burden for all students.
- While Virginia is fully prepared to report WIOA student outcomes and to begin to establish reasonable performance thresholds, subsequent years of actual data are needed for normalizing this information. The training providers themselves are reliant upon our case management system to provide reliable outcomes. Requiring the same oversight of all other, non-WIOA participants, is an unfunded burden for the training providers, and LWDBs.
- Significant proprietary schools that are effective training providers do not have the resources to develop follow-up research, surveys, or other outcome validation with students.

Waiver Goals and Programmatic Outcomes

Ease reporting burden on ETPs

- Remove the most significant disincentive for schools and training providers to participate, in anticipation of maximizing the available marketplace of training curriculum.
- Reporting performance data on all individuals engaging in a program of study (or the equivalent) consumes considerable time and expense. Reducing ETPs' reporting requirements to include only WIOA-funded participants would save considerable time and expense to allow ETPs to focus on education and training outcomes while still providing the required data on WIOA-funded participants.

Ensure protection of non-WIOA participants' PII

- Removal of reporting requirements for individuals who are not WIOA participants will reduce ETPs' liability for potential breach of those individuals' PII.

Programmatic Outcomes

- Developing contextual research and establishing performance thresholds in partnership with Higher Education, the individual public and proprietary schools, and other labor market analysis to create truly engaged sector strategy connections to the ETP.
- Reduction of the reporting burden on ETPs allows them to focus more time and resources on producing successful outcomes for WIOA-funded participants as well as for their non-WIOA students.

In addition, the waiver will provide the following:

- More available and varied training offerings for individuals utilizing Individual Training Accounts (ITA) via the public workforce system leads to greater customer choice.
- Lower cost training options as the result of more eligible providers.
- Stronger partnerships and relationships between training providers and the public workforce system.
- Enhanced ability of local boards to respond quickly and efficiently to immediate local job seeker and employer needs.
- Enhanced ability of staff at local American Job Centers to more effectively respond in meeting the needs of job seekers and employers alike.

Individuals, Groups or Populations Impacted by the Waiver

Virginia job seekers, the American Job Center staff, and subcontracted service providers, especially the training provider staff, will benefit from this waiver. Business customers will also benefit from this waiver, as they will have a larger number of WIOA-funded training providers to skill-up their talent pipeline.

This waiver is intended to reduce the reporting burden on ETPs while still requiring them to report required performance data for all WIOA-funded participants. Through this waiver, ETPs will be more willing to submit data on their WIOA-funded students and to remain in the ETP program, thus allowing the Virginia workforce system to continue delivering essential training services that meet the needs of employers, job seekers, and workers.

By reducing barriers or the reporting burden of ETPs, this will allow them to focus on providing increased access and service delivery by programs more effectively, especially for disadvantaged populations and individuals with multiple barriers to employment.

Actions the State (Virginia) has undertaken to remove State or local barriers

There are no state or local statutory or regulatory barriers to implementing the requested waiver. Virginia policy statements (from the Virginia Board of Workforce Development or the Virginia Community College System –Workforce Development System) comply with current federal requirements.

Alignment with Department of Labor priorities supported by the Waiver:

- A. Supporting employer engagement;
- B. Connecting education and training strategies;
- C. Supporting work-based learning;
- D. Improving job and career results, and
- E. Other guidance issued by the Department.

This waiver aligns with DOL's policy priorities in that it connects education and training strategies by reducing the reporting burden on ETPs, thus allowing them to focus more time and resources on

producing successful outcomes for WIOA-funded participants. Furthermore, it protects the privacy rights of the ETPs' students who are not WIOA participants.

How the state plans to monitor waiver implementation, including the collection of waiver outcome information

Virginia will continue to collect data from ETPs on their WIOA-funded students and will submit that data in the annual report to DOL. Virginia will also collect and report information about waiver outcomes in the state's WIOA Annual Report.

The WIOA Title I Administrator will provide annual on-site programmatic reviews that will include sampling and evaluation of how this waiver has impacted local programs, processing applications, enabling students, and assess performance outcomes.

Assurance of State posting of the requests for public comment and notification to affected Local Workforce Development Boards

According to Virginia's state board policy: *VBWD 100-03, Process of Submission of a Waiver Request to the U.S. Department of Labor*, a waiver request approved by the Executive Committee of the Board will be considered "preliminary" and will be subject to review and comment by impacted local chief elected officials and the public at-large". The VBWD will have an official public comment period and comment submission process in which the Local Workforce Development Boards will have an opportunity to comment. The public comment period will also give business and organized labor the opportunity to provide feedback.

A public comment period was provided for all stakeholders from December 20, 2018 until January 25, 2019. Stakeholders (including LWDBs, chief elected officials, eligible training providers, businesses and public at-large) had the opportunity to submit their comments via the Virginia Career Works website.

Upon approval of the waiver, the WIOA Title I Administrator will issue a Virginia Workforce Letter notifying all local Workforce Development Boards that this practice will be implemented based on the waiver effective date.

Commonwealth of Virginia WIOA Waiver Request: Out-of-School Youth 75 percent Expenditure Requirement

The Commonwealth of Virginia is requesting approval of the following waiver in accordance with the Workforce Innovation and Opportunities Act (WIOA) statutory and/or regulatory requirements.

Regulatory Requirements to be Waived – Out-of-School (OSY) Youth 75 Percent Expenditure Requirement

Virginia requests consideration of a waiver from the requirements in Section 129(a)(4)(A) and 20 CFR 681.410 which require not less than 75 percent of funds allotted to states under Section 127(b)(1)(c), reserved under Section 128(a), and available for statewide activities under subsection (b), and not less than 75 percent of funds available to local areas under subsection (c), shall be used to provide youth workforce investment activities for OSY.

Virginia is submitting the following waivers to this statutory and regulatory provision:

1. A waiver of the requirement to expend 75 percent of funding on the OSY population. Virginia is requesting that this percentage be lowered to 50 percent.
2. A waiver of the requirement that local funding meet the 75 percent minimum expenditure requirement. Virginia requests that this percentage be lowered to 50 percent to align with the statewide target (see 1 above).
3. A waiver of the requirement that 75 percent of WIOA Title I Youth funds reserved by the Governor for statewide activities and spent on direct services to youth, be spent on the OSY population. It is requested to reduce this percentage to 50 percent to allow flexibility of funding special projects that meet the vision and mission of the state.

Background

Per the Virginia Department of Education, 87.6 percent of economically disadvantaged students graduated and 7.8 percent dropped out in 2018. Additionally, 72.5 percent of English learners graduated and 24.6 percent dropped out. According to data from the Virginia State Department of Health, youth who graduate high school are more likely to be employed, tend to earn higher incomes, and tend to enjoy better health than those who do not earn a high school diploma. Virginia's goal is to minimize Virginia's drop-out rate through youth services.

According to the 2018 Annie E. Cassie Foundation's Kids Count Data Book, 54 percent of employers do not believe students are adequately prepared for the workforce, and 47 percent left jobs unfilled in the past year due to underqualified applicants. Employers cite critical thinking, responsibility, self-discipline, communication and teamwork as the most crucial employability skills in today's job market.

The Commonwealth of Virginia currently has a 500 to one student to school counselor ratio, and each year, counselors are being asked to administer additional job duties that do not allow them the opportunity to counsel students on life after high school. To combat these issues and increase the state's graduation rate, the Virginia General Assembly committed state funds in the 2016 biennium budget to dropout prevention funding. However, this funding is not guaranteed in future years to sustain and expand program activities in future years, but can be coupled with WIOA formula funds to create a robust dropout prevention and re-engagement program designed to assist Virginia's most at-risk youth.

This waiver is consistent with our Governor's vision to cultivate a strong and diverse economy and develop a 21st Century skilled and ready workforce. Specific to these broad goals, the Governor is working to align workforce and education programs with goals of student matriculation into college or credential programs, or skills to go directly into a quality job, create career pathways for high school students that prepare them for post-secondary options such as apprenticeships and work-based learning experiences, and connect the Department of Education to in-demand industry employer partners.

The waiver requests will give Local Workforce Development Boards flexibility to provide customized regional solutions based on two needs; 1) the need for flexibility to improve youth services in local areas based on unique local economic, education, and workforce pipeline conditions, and 2) the need for flexibility to strengthen the regional convener role by working closely with regional school systems. With Virginia's increased focus on career pathways, sector strategies, and work-based learning, a waiver on youth expenditures will greatly increase the flexibility of the State and Local Workforce Development Boards to serve youth ages 14-24 throughout the Commonwealth.

The above waiver requests will result in increased partnership and collaboration between the State Department of Workforce Development, its Workforce Development Boards, local school districts, parents, families and communities, post-secondary institutions, public and private organizations and local employers. The added flexibility will support our youth and greatly improve the local areas responsiveness to business needs and allow them to develop and implement talent pipelines and career pathways.

Waiver Goals and Programmatic Outcomes

Goal: Increase services to at-risk in-school youth in local schools to further align career pathways and sector strategies, as outlined in Virginia's Combined State Plan.

Expected Outcome: Approval of the waiver request would allow the state and local areas to focus funding and services on engaging at-risk in-school youth to ensure that effective student career pathway guidance is provided prior to graduation. This pre-graduation intervention would also better prepare high school students for post-graduation success, especially for those that have barriers to that success. In rural areas, the school systems are sometimes one of the only ways that a Local Workforce Development Board can connect to a critical mass of youth ages 14-24.

While there are support systems in the K-12 school system for individuals with barriers to employment, with the Standards of Learning (SOL) requirements and other mandatory academic and administrative tasks, counselors and teachers are unable to provide intensive supports to student in need. The waiver would allow the Local Workforce Development Boards to pick up some of the intensive support that students need, especially when focusing on Career and Technical Education (CTE), which is one of the priorities of Virginia with the Portrait of a New Graduate through the Virginia Department of Education. By assisting CTE efforts targeting in-school youth, seamless transitions such as pre-apprenticeship to apprenticeship and work experience to post-secondary education can be established.

Goal: Increase numbers of better-prepared youth to meet growing business demand.

Expected Outcome: Business are consistently demanding more support for youth in the K-12 system assisting with work-readiness and soft skills training. By having restrictions on funding to serve in-school youth, the Local Workforce Development Boards are unable to assist businesses in preparing K-12 youth for short-term training and credentials.

Many areas in the Commonwealth are also facing population shortages, with no substantial growth projected over the next 5-10 years. With this population shortage, it is critical for Local Workforce Development Boards to engage with youth in the K-12 school system to promote local employment opportunities and develop career exploration for non-college-bound students. If the waiver is received by Virginia, the Local Workforce Development Boards could further develop talent pipelines for businesses in the Commonwealth and ensure that both students and partners are educated about the training and credentials needed for employment opportunities in their local area. This can be done by partnering with the Department of Labor and Industry (DOLI) and the K-12 school systems to promote pre-apprenticeship training and Career and Technical Education (CTE) training, which would then lead to apprenticeship and work-based learning opportunities with local businesses. These career exploration activities have been requested by local businesses and would strengthen the Local Workforce Development Board's involvement with the business community.

Goal: Increase the number of students living in areas of high-poverty that are connected to post-secondary education or self-sustaining employment.

Expected Outcome: While the unemployment rate in Virginia is continuously declining, the percentage of in-school youth that are receiving free and/or reduced lunch has increased in some areas of the Commonwealth. Families that are living in high-poverty areas are less likely to support the connection to post-secondary education or self-sustaining employment, and youth living in these families are typically plagued by barriers to education and employment. By partnering with the K-12 school systems to identify these students that are on free and/or reduced lunch and working with the schools to provide better supports and leverage federal funding, better outcomes for these students will occur.

Goal: Increase the number of work-based learning activities that are occurring with the WIOA Title I Youth program and provide talent pipeline, work experiences, and career exploration activities in partnership with local businesses.

Expected Outcome: In-school youth can more easily access work-based learning than out-of-school youth because most are not yet facing obstacles of an adult criminal background, pregnancy, child care needs, or other supportive services. Many organizations and localities throughout the Commonwealth have created programs for work experience and on-the-job training. With the waiver the Local Workforce Development Boards will be able to partner with these programs to ensure that efforts are leveraged instead of duplicated.

Goal: Increase awareness and visibility of the WIOA Title I Youth programs and increase number of individuals enrolled in the Youth program throughout the Commonwealth.

Expected Outcome: WIOA Youth Specialists work diligently meeting with school representatives to develop partnerships and promote awareness of WIOA Title I Youth services. Many in the school systems were familiar with WIA, however when WIOA was implemented, the WIOA Youth Specialists lost many contacts with school system representatives because students were unable to be served in the same way or at the same capacity. Being able to bring these services back into schools will not only assist with In-School Youth referrals, but Out-of-School enrollments as well, since Youth Specialists will have more visibility with school representatives and the student population earlier. In addition, many youth services align with the needs of a younger clientele (work readiness, budgeting, work experiences); if students are equipped with these tools, that most schools do not provide, the in-school students would benefit greatly.

Alignment with Department Policy Priorities

This waiver aligns with all of the State's Strategic Goals:

- *Goal 1:* Increase business engagement and deliver value to our business customers.
- *Goal 2:* Achieve measurable skills development in our job seeking customers in the form of workforce credentials that matter to business.
- *Goal 3:* Fill jobs in demand occupations that show promise for long-term growth in industries that are strategic to Virginia's economy and strengthen Virginia's regions.
- *Goal 4:* Help individuals, including individuals with barriers to employment, gain access to the middle class and demonstrate career progression.
- *Goal 5:* Ensure that workforce system public investments generate a quality return to Virginia and the customers we serve.

This waiver will allow the State and LWDBs to have flexibility to support our youth and greatly improve the local areas responsiveness to business needs, and allow them to develop and implement talent pipelines and career pathways.