



JUN 24 2019

The Honorable Mark Gordon
Governor of Wyoming
Office of the Governor
State Capitol Building, Room 124
Cheyenne, Wyoming 82002

Dear Governor Gordon:

Thank you for your waiver request received on April 22, 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 request and memorializes that Wyoming will meet the outcomes and implement the measures identified in its plan to ensure accountability agreed to by Wyoming 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 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 Wyoming 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.

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.

If you have questions or wish to explore additional flexibility, feel free to contact my office at (202) 693-2772.

Sincerely,

A handwritten signature in blue ink that reads "Molly E. Conway". The signature is written in a cursive style with a large, looping "y" at the end.

Molly E. Conway
Acting Assistant Secretary

Enclosure

cc:

Robin Sessions Cooley, Director, Wyoming Department of Workforce Services
Nick Lalpui, Dallas Regional Administrator, Employment and Training Administration
Eva Drinkwine, Federal Project Officer, Employment and Training Administration



Mark Gordon
Governor

State of Wyoming Department of Workforce Services

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Robin Sessions Cooley
Director
Jason Wolfe
Interim Deputy Director

April 18, 2019

U.S. Department of Labor
Employment and Training Administration
Attn: Nicholas E. Lalpui, Regional Administrator
525 S. Griffin Street, Suite 317
Dallas, TX 75202

Re: WIOA Waiver Request – Eligible Training Provider (ETP)

Dear Mr. Lalpui:

As the state's administrative entity for Workforce Innovation and Opportunity Act (WIOA) funds, the Wyoming Department of Workforce Services continues a history of successful delivery of employment and training programs.

Please consider this request for waiver of the requirements related to the collection and reporting of performance data for all students participating in training programs listed on the state's Eligible Training Provider (ETP) List. This requirement is especially burdensome when ETPs have many students of whom, only a small percentage are WIOA participants.

The Wyoming Department of Workforce Services is concerned that providing data on all individuals engaging in a program of study instead of WIOA-funded participants only may conflict with FERPA which protects the privacy of student education records. We have reviewed TEGL 7-16 and understand that FERPA provides an audit exception for WIOA performance accountability purposes; however, we have continued to experience Eligible Training Providers that are reluctant and in some cases unable to share the needed data.

This waiver was posted on the Wyoming Workforce Development Council website, (<http://wyowdc.wyo.gov/>), for public comment on January 10, 2019 and posted on Wyoming Press Association from January 14, 2019 through February 13, 2019. We received one comment and have responded to it accordingly.

Should you or your staff have questions about the waiver, please feel free to contact Christina West at 307-777-8712 or by email at christina.west@wyo.gov. Thank you for your time and consideration.

Sincerely,

Robin Sessions Cooley
Director

RSC:cw
Enclosures
File Reference: RSC-19-016

As public servants, we work hard every day to help ensure
safe and fair workplaces with qualified workers

WIOA Waiver Request

Requirement to collect and report performance data on all students in programs on the State's Eligible Training Provider List

The State of Wyoming

The State of Wyoming 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 (CFR 677.230 and 20 CFR 680.400 through 680.530). In whole these regulations constitute a burdensome requirement for the collection and reporting of performance outcomes for all students above and beyond WIOA participant students, participating in training programs listed on Wyoming's Eligible Training Provider List.

The Eligible Training Provider List (ETPL) federal requirements are creating a hardship for many training providers, including the technical colleges, resulting in decreased numbers of providers adding their programs to the ETPL. Many training providers do not have existing staff to perform the data gathering processes required to submit program information and performance data and cannot justify hiring additional staff. The regulations and related performance measures requiring providers to include "all students" cohort also interfere with FERPA laws. Providers do not currently have student's complete releases for data gathering purposes. Wyoming Department of Workforce Services has one staff member providing technical assistance to training providers in an effort to reduce hardships relating to collecting provider and program data; however, these issues are leading to Wyoming having less training providers on the list.

Due to the size, population and the demographics of Wyoming, there are already limited training resources available to individuals. The administrative burden of the regulations and performance measures will decrease the number of providers and programs on Wyoming's eligible training providers' list and negatively impact consumer choice in an area with current limited options.

This waiver request will assist Wyoming to further develop its workforce while continuing to focus on innovative strategies for a demand-driven workforce.

1. Waiver from the Eligible Training Provider Data Collection and Reporting Requirements.

Wyoming is seeking a waiver from the requirements outlined in Sections 116 and 122, and at 20 CFR 677.230 and 20 CFR 680.400 through 680.530, which require the collection and reporting of performance related data on all students participating in training programs listed on the EPTL.

While Wyoming Department of Workforce Services recognizes the value and importance of monitoring provider performance, requiring Eligible Training Provider's (ETPs) to produce data on all individuals instead of just WIOA-funded participants places an undue burden on the ETP's to collect, enter, and report excessive data. This is especially burdensome when ETPs have many students of whom, only a small percentage are WIOA participants.

Training providers in Wyoming, primarily education institutions, typically track outcomes for individuals with declared majors or program concentrations and by academic year. Data for WIOA

defined exit dates for non-WIOA individuals is not available nor are employment and earning outcomes tracked for and therefore does not exist for students who have no intention of utilizing the knowledge or skills gained for occupationally related endeavors.

2. Actions Taken to Remove Barriers

There are currently no State or local statutory or regulatory barriers to implementing the requested waiver. The State of Wyoming regulations and policy statements are in compliance with the current federal law.

The state is working to leverage existing systems to assist with meeting the WIOA ETP performance reporting requirements.

Despite these efforts, the state has faced several challenges while working to implement the WIOA ETP requirements, which include:

- Ensuring that local areas have sufficient members of, and diversity of, training providers necessary to create an effective marketplace of training programs for WIOA participants utilizing Individual Training Agreements.
- Ensuring fairness in the process of determining training provider eligibility.
- Reducing the burden on training providers to submit performance information to the state which may not be readily accessible to the provider.
- Eligible Training Providers must collect and transmit sensitive information, such as social security numbers, etc., on all students to match employment and earnings information, which may leave students open to identity theft, and privacy considerations.
- Significant proprietary schools that are effective training providers but do not have the resources to develop follow-up research, surveys, or other outcome validation with students.

3. Goals, Outcomes, and Benefits Related to this Waiver Request include:

- More numerous and varied training offerings for individuals utilizing ITAs.
- More training providers may lead to lower cost and more robust demand-driven training options.
- Stronger partnerships and relationships between providers and the one-stop system.
- Greater utilization of the ETPL by individuals pursuing training in Wyoming related to jobs that are in-demand by employers now and in the future.
- The Eligible Training Provider List is also a designated process to ENDOW (Economically needed Diversity Options for Wyoming) Initiative. The ENDOW initiative is an integral piece in meeting the State of Wyoming legislative goals to diversify the State's economy and grow/expand opportunities to keep young people in Wyoming. Therefore, this will cause a major impact on our State's goals and efforts.

4. Individuals impacted by the Waiver

Job seekers, individuals who access training services in Wyoming via ITAs, One-Stop staff, and training providers, especially training provider's staff will benefit from this waiver.

5. Monitoring and Implementation

Annual WIOA reviews will include an evaluation of how waivers are impacting local programs to ensure programmatic goals and outcomes are being met. Wyoming will collect and report information about waiver outcomes in the State's WIOA Annual Report.

6. Notice to Affected Local Boards

Wyoming is a single workforce area state. The individuals who are involved with the ETP performance requirement were involved in the development and finalization of this waiver request.

7. Public Comment

This waiver request was posted on the Wyoming Workforce Development Council website for comment and reviewed by interested stakeholders.