



NOV 08 2018

The Honorable Jay Inslee
Governor of Washington
Office of the Governor
Post Office Box 40002
Olympia, Washington 98504-0002

Dear Governor Inslee:

Thank you for your waiver request on August 15, 2018, 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.

Requested Waiver: Waiver of WIOA Section 129(a) to allow the state to continue developing new business partnership models for youth and adults using statewide Governor's Reserve funds.

ETA Response: The State is requesting a waiver of WIOA Section 129(a) that requires documenting the eligibility of youth participants in WIOA programs to allow the State to continue developing new business partnership models for adults and youth using the Governor's Reserve funds. After reviewing the State's waiver request and plan, ETA is pleased to inform you that no waiver is necessary. The program that the State outlined in its waiver request describes an innovative strategy designed to meet the needs of industry in the State using Governor's Reserve funds, as described at 20 CFR 682.210(b). This is an allowable statewide activity under Section 134(a)(3)(i), and WIOA does not contain any eligibility requirements for those activities. Therefore, the State is not required to conduct eligibility assessments for funds expended for these activities.

ETA is supportive of Washington's initiative and wishes to provide the State with all available tools for successful implementation. While the project described can stand as-is, in the future it may be helpful for the State to consider the flexibility afforded by the ability of states to combine Governor's Reserve funds among the Adult, Dislocated Worker, and Youth funding streams, as the allowable statewide activities associated with each varies. ETA also recognizes the State's commitment to serving youth participants who meet the eligibility criteria in Section 129(a) of WIOA. Therefore, ETA suggests that Washington may wish to consider requesting the following waiver, should the need arise in the future, to serve more in-school youth (ISY) with statewide funds:

- **Waiver of the requirement at WIOA Section 129(a)(4)(A) and 20 CFR 681.410 that states expend a minimum of 75 percent of WIOA youth statewide funds on out-of-school youth (OSY).** Under this waiver, the State would be responsible for determining youth participant's eligibility. However, the waiver could help the State serve additional ISY with statewide funds.

ETA has a vested interest in the success of this initiative, as well as fostering creative workforce and industry solutions nationwide. As Washington moves forward, we encourage the State to share ideas and seek peer-to-peer sharing opportunities with other states on its progress. We also invite the State to contact us should technical assistance needs arise, and to share progress on the project. ETA looks forward to reviewing the State's accomplishments in future WIOA Annual Reports.

The Department of Labor proposed additional flexibility in its Fiscal Years 2018 and 2019 Budget requests to provide governors more decision-making authority to meet the workforce needs of their states. 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:

Eleni Papadakis, Executive Director, Washington Workforce Training and Education
Coordinating Board
John Bailey, Acting San Francisco Regional Administrator, Employment and Training
Administration
Carol Padovan, Federal Project Officer, Employment and Training Administration



STATE OF WASHINGTON
WORKFORCE TRAINING AND EDUCATION COORDINATING BOARD

128 - 10th Avenue, S.W. • PO Box 43105 • Olympia, WA 98504-3105
Phone: (360) 709-4600 • Fax: (360) 586-5862 • Web: www.wtb.wa.gov • Email: workforce@wtb.wa.gov

August 15, 2018

The Honorable Rosemary Lahasky
Deputy Assistant Secretary
U.S. Department of Labor
Employment and Training Administration
200 Constitution Avenue N.W.
Washington, D.C. 20210

RE: Waiver Request on Certain Statutory and Regulatory Provisions of the Workforce Innovation and Opportunity Act

Sent via Electronic Mail

Dear Secretary Lahasky:

This cover letter accompanies Washington's waiver request from statutory and regulatory provisions of the Workforce Innovation and Opportunity Act related to the uses of state-wide activities funds.

Thank you for your thoughtful consideration of our workforce system's request. Please contact my office with any questions or concerns.

Sincerely,

Eleni Papadakis
Executive Director

CC: John Aultman, Senior Policy Advisor - Higher Education & Workforce, Office of Governor Inslee
Carol Padovan, Washington Federal Projects Officer, Department of Labor

Attachment

FROM: Washington Workforce Training and Education Coordinating Board
TO: Department of Labor Region 6 – Employment and Training Administration
RE: Requesting a Waiver on Allowable Uses of the Governor’s Statewide Activities Funds
DATE: August 15, 2018

Washington requests a waiver from the Department’s interpretation of 20 CFR § 682.110 that WIOA § 129(a)(1) requires documenting the eligibility of all youth participants, when served by the Governor’s statewide activity set-aside funds. Specifically, we are seeking a waiver to continue developing new business partnership models for adults and youth. These new models, once fully implemented, are expected to have a significant positive impact on all WIOA-eligible populations.

Washington *does not* seek to impose a waiver on any form of youth eligibilization when *other* WIOA formula funds are used to serve young people. Our request is to obtain flexibility only on statewide activity funds to develop new service models. With this waiver, discretionary funds set aside from adult, dislocated worker, and youth service distributions (WIOA Title I) can be combined to fuel innovation and systemic reform. An integrated, employer-invested talent development system, with a focus on our historically economically disadvantaged populations, will result in improved outcomes across a wider range of populations facing similar barriers.

**GRANTING THIS WAIVER SUPPORTS WASHINGTON’S WORKFORCE PLAN GOALS AND
DEPARTMENT OF LABOR PRIORITIES**

Washington has historically deployed statewide activity funds as “demonstration” grant funds to test new service strategies for serving all of WIOA’s focus populations, while strengthening employer partnerships—two uses explicitly authorized for statewide activity funds. Under the law and rules, statewide activity funds may be used for: “developing and implementing innovative programs and strategies designed to meet the needs of all employers,”¹ or for “conducting research or demonstration related to meeting the employment and education needs of youth, adults, and dislocated workers.”²

Under WIA, Washington pioneered a number of models that achieved scale in Washington and were replicated by other states, including developing sector partnerships, dropout re-

¹ 20 CFR 682.210(b).

² 20 CFR 682.210(f).

engagement community-school partnerships, and career-connected learning models. These demonstrations, which benefited Washington employers, adult jobseekers and young people left behind in our economy, and which proved to be cost effective with high returns on taxpayer investments resulted in changes to practice, state policy and budget.

Two years ago, through our state WIOA planning process, our state's workforce system partners committed to testing an "Upskill-Backfill" approach designed to help Washington workers, particularly those with barriers to job and wage progress, skill up to move forward with their careers, while new workers "backfill" into newly created openings. The concept resulted from conversations with employers from across the state held to learn what might engage businesses to work with our system to meet their workforce needs.

Strengthening employer engagement is a key priority of the state's workforce plan, "Talent and Prosperity for All (TAP)", and of our workforce system partners. However, as we developed TAP, holding public forums across the state, employers told us they viewed the public workforce system as a "risky" option to meet their talent needs. Many employers do not understand or trust that the workforce system serves a universal population, or that the system is able to prepare individuals with appropriate skill- and work-readiness levels that "fit" into their cultures. Employers also said they worried that employees hired from our system would not last long on the job.

We learned that employers willing to consider recruiting through our workforce system were more likely to hire into entry-level positions, where they believed they could better tolerate the risk of underperforming or short-term workers. But those employers reported they could not create new entry-level positions without advancing their current workforce to new roles. They also suggested that without the right skills, or more up-to-date skills among their incumbent workers, they were unable to expand their business to new markets or even to retain current customers with increasingly tighter product or service specifications. These perceptions jeopardized our goal of achieving a sustained, co-invested relationship with business. The "Upskill-Backfill" demonstration project was created with our business, labor, and system partners to bridge this divide, and build a stronger foundation for deeper collaboration between the public workforce system and the private sector.

This concept was included as an option to explore in our state's strategic workforce development plan, *Talent and Prosperity for All (TAP)*. In researching the concept we found positive evidence from small demonstration projects in other states. However, no identifiable infrastructure changes resulted. The concept disappeared once grant funding ended. To transform our state's infrastructure, Washington needed to work closely with industry and

system partners to test the concept and create a policy framework and funding model within existing resources. For this approach to be an effective vehicle for our businesses to engage with our system, the new model must demonstrably support business goals. The resulting policy framework needs to assure businesses that we can predictably meet their needs, now and into the future. The more predictability we can provide the services on talent needed by industry, the more businesses gain confidence in our system and our ability to prepare WIOA-eligible populations for the jobs they need filled.

By granting this waiver, Washington can continue to test evidence-based, innovative approaches to serving WIOA participants, including the hardest-to-place focus populations. This flexibility, in the case of "Upskill-Backfill," also allows a broader approach that benefits not only jobseekers with barriers, but employers and their current workforce who often are in need of new skills. "Upskill-Backfill" is a lay-off aversion strategy as well as a job development strategy for the unemployed and underemployed. It also allows our state to share outcomes and strategies among system partners from across Washington in a community of learning that leads to continuous improvement. We are better able to integrate other public partners into the system in sustainable ways, as each partner sees the resulting benefit to their customers. (WA has 22 federal and state programs in its Combined State WIOA Plan all committed to service integration). But in particular, granting this waiver provides our employer partners with confidence to build co-invested relationships with our entire workforce system, knowing there is needed flexibility to design sustainable projects.

A summary of the Upskill-Backfill Initiative and its goals is attached.

DIRECT IMPACT OF WAIVER ON UPSKILL-BACKFILL INITIATIVE

Right now, several demonstration projects are in jeopardy due to the Department's new rule. The Local Workforce Development Boards administering the projects, their chief elected officials, and their employer partners are fearful of cost disallowances that they will not be able to absorb. Employers also view the WIOA § 126 requirement that all participants be assessed for eligibility as particularly onerous. They view this step as time-consuming, invasive, and unnecessary because it subjects their employees and local partners to unanticipated and unsupported documentation requirements. While they have reaffirmed their commitment to establishing pathways for WIOA-eligible participants, they want their investments to help build a sustainable talent pipeline development system that is accessible to all, and believe that forcing eligibilization at the development stage sends an inaccurate message about their involvement. This is not a minor issue. Employer partners representing critical industry sectors, including manufacturing, marine and construction, say they will terminate their new

partnerships with our system if they don't get needed flexibility to build and test effective approaches to engage with our services. Employers in these growing sectors will continue to find and hire skilled employees, with or without our program. By using other pathways, it effectively reduces access for WIOA-eligible participants.

a. Supporting Implementation of Washington's State Plan

Washington's WIOA strategic plan, *Talent and Prosperity for All (TAP)*, established four overarching priorities for the state workforce system: strengthening engagement with employers, streamlining and integrating service delivery to jobseeker customers, ensuring system accessibility for all populations, and leveraging common performance accountability measures to provide a more accurate snapshot of program outcomes.

Governor Inslee specifically charged all stakeholders in the workforce system to commit to a plan that accomplishes three objectives:

1. Help more people find jobs that lead to economic self-sufficiency, with a focus on disadvantaged populations.
2. Close skill gaps for employers, with a focus on in-demand industry sectors and occupations, including apprenticeships.
3. Work together across programs and funding silos as a single, seamless team to make this happen.

Without new public resources, however, all partners understand that we will have to find mechanisms and new service models to streamline and align programs and funding streams, and bring business to the table as both co-investors and co-creators of the state's talent pipelines. We also came to understand that until more businesses across Washington saw value in the system as a talent development partner, our outcome numbers would not rise to the levels the state needs to ensure that every Washingtonian has access to an economically secure future.

b. Supporting the Expressed Priorities of Congress and the Department of Labor

WIOA-eligible individuals, including youth, are one of the focus populations of the Upskill-Backfill Initiative. WIOA § 129(b)(2)(A)(ii) authorizes Governors to use their set-aside funds on "demonstration projects related to meeting the education and employment needs of eligible youth." Washington desires flexibility to innovate with the Governor's reserve funds not just for the benefit of eligible youth, but also to produce policy outcomes that will benefit other focus

populations under the law. Another provision in the law, WIOA § 129(b)(2), specifically allows governors to spend statewide activity funds on alternative approaches meant to enhance choice for focus populations (in this case, eligible youth), without necessarily being *offered* only to eligible youth:

(B) [S]upporting the development of alternative evidence-based programs and other activities that enhance the choices available to eligible youth and encourage such youth to reenter and complete secondary education, enroll in a postsecondary education and advanced training, progress through a career pathway, and enter into unsubsidized employment that leads to economic self-sufficiency. [Emphasis added.]

20 CFR § 682.210 of the WIOA rules provides further guidance that allowable Governor’s statewide activities may include **“developing and implementing innovative programs and strategies designed to meet the needs of all employers (including small employers) in the State[,]”** or **“conducting research and demonstrations related to meeting the employment and education needs of youth, adults and dislocated workers[.]”** 20 CFR § 682.210 further reinforces the statutory authorization quoted above from WIOA § 129(b)(2)(B), verbatim, that an allowable use of the statewide activity funds should be to test **“alternative service designs.”**

This waiver would profoundly and positively affect Washington’s workforce system’s ability to engage employers in the design and outcome of sustainable talent pipelines. Ultimately, the project’s design must make sense for industry if we want employers to participate as partners. Without industry participation, we won’t be able to help more jobseekers become employed and economically self-sufficient. We consider this a missed opportunity and a step backward in our attempt to bring business and industry to the table as true partners in our public workforce system. From a legal standpoint, Washington’s request aligns with both the statutory language and subsequent WIOA guidance in that the state will test innovative approaches to service delivery that enhances choices for all of WIOA’s focus populations while also developing and implementing sustainable strategies tailored to employer needs.

c. Summary of Waiver Request

At a minimum, we ask to be able to continue currently funded “Upskill-Backfill” projects without fear of cost disallowances because some participants do not meet WIOA eligibility criteria. Eight projects were funded in Washington before we became aware of the new rules for statewide activity funds. Because of the similarity of language in WIA and WIOA, we assumed the interpretation of the law would also be similar—and postponed reviewing that

section of the new rules in order to focus on rules linked to significant change between WIA and WIOA.

Washington seeks to waive the interpretation of WIOA § 126 *only* as to the set-aside statewide activity funds, the “Governor’s discretionary funds,” and not as to all WIOA formula funds. The specific flexibility to test and experiment innovative approaches that accompanies Governor’s statewide activity funds in the statutory language, and subsequent guidance on WIOA, support Washington’s request.

Granting this waiver allows Washington the flexibility to implement innovative models that forge stronger relationships between the state’s workforce system and businesses, and provide more options for all focus populations facing barriers to enter the labor market. Washington asks to have flexibility with the Upskill-Backfill Initiative, at a minimum, and potentially to test other models to incent employer engagement and cultivate a co-invested relationship with the state’s workforce system. All such projects must present a logic model with high confidence of improving WIOA Title I services for targeted service populations. The lessons learned will be applied to future efforts that benefit both employers and jobseekers—leveraging the influence of the state Workforce Board to identify and socialize evidence-based approaches that create solid workforce pathways for some of the hardest to place, while cementing employer confidence in our workforce system.

PROJECTED PROGRAMMATIC OUTCOMES FROM WAIVER IMPLEMENTATION

Immediately, implementation of this waiver will allow Washington to move forward with the Upskill-Backfill Initiative and continue testing new approaches for employer engagement that build pathways for WIOA populations facing barriers to employment.

A description and progress update for each of the eight “Upskill-Backfill” projects is attached.

INDIVIDUALS, GROUPS, AND POPULATIONS BENEFITTING FROM THE WAIVER

- WIOA Focus Populations, including Youth
- Businesses/Employers

CONTINUED MONITORING OF WAIVER IMPLEMENTATION AND OUTCOMES

Participants in all projects are registered in the Employment Security Department’s data-tracking portal (ETO), regardless of whether individual participants are eligible for WIOA funding. Outcomes are also tracked for projects using the ETO. All project grantees customarily

report on outcomes quarterly. Progress and outcomes toward established deliverables are monitored and conveyed in the state's annual performance report.

STATE AND/OR LOCAL BARRIERS TO GRANTING THIS WAIVER

There are no anticipated barriers to granting the waiver.

ASSURANCE OF SUBMISSION FOR PUBLIC COMMENT

The Workforce Board has circulated this waiver request and solicited comment by e-mail distribution to all voting and advisory members of the state Workforce Board, Washington's local workforce development area directors, and to the Washington Workforce Association's Executive Director and Chair.

Attachment A

TAP ACCELERATOR: UPSKILL-BACKFILL INITIATIVE *To accelerate the goals of the state's workforce development plan, "Talent and Prosperity for All"*

Governor Inslee has provided funding support to help accelerate implementation of the comprehensive state workforce development plan, "Talent and Prosperity for All" or TAP. In addition to general support for the 6 TAP Implementation Committees, he has asked that the Workforce Board use a model highlighted as an example in the TAP plan, the Upskill-Backfill strategy, to fund pilots or demonstrations that will advance implementation towards TAP's goals.

The Upskill-Backfill Initiative (UBI) joins public and business resources to improve the workplace skills of both incumbent workers and new hires-- and creates a pathway to gainful employment and wage progression for our job-seeking Washingtonians, especially those at the lowest income levels or who have other disadvantages in the job market. Each project funded will result in benefits to the employer, the incumbent workforce and job-seekers. Businesses will improve their productivity and competitiveness, to thrive and grow new jobs. Current workers will have the opportunity to train (upskill) for promotional opportunities and higher wages, and to contribute to the stability and vitality of their workplace. As promoting incumbent workers creates vacancies, or as higher productivity and competitiveness create new job opportunities, Washington job-seekers will benefit. The UBI program will include customized training for job-seekers to prepare for the jobs created, and our public talent development system will support a pipeline or pathway for low-income and underserved individuals to these gainful, high demand jobs.

The Workforce Board will work with system stakeholders to develop the funding application guidelines and process. Gov. Inslee asks that these items be considered in the development of the TAP Accelerator: Upskill-Backfill Initiative.

- I. Overarching goals:
 - a. Businesses will improve their ability to compete.
 - b. Businesses will grow their workforce in the period after the program intervention (measurement period TBD).
 - c. When appropriate, businesses will have plan for succession
 - d. Incumbent workers will see an increase in their income.
 - e. Unemployed or underemployed individuals will secure employment at livable wages at participating employer sites.
- II. Governor Inslee's special considerations for job-seeker/workers:

- a. Benefit incumbent workers with some college and no degree, or no school credential
- b. Develop pipeline for backfill opportunities to populations with barriers to employment
- c. Support new hires, including access to further skill development, once on the job.
- d. Develop apprenticeship and other work-based learning opportunities for young people; especially high school apprenticeship programs

III. Governor Inslee's special considerations for participating businesses:

- a. Target critical industry sectors
- b. Projects should engage a consortia of employers whenever possible
- c. Establish vendor-supplier networks whenever possible
- d. Design feasible employer matching (cash or in-kind) parameters

IV. Governor Inslee's special considerations for system:

- a. Single state strategy, seamless to employers and job-seeker/workers
- b. Use existing resources first; discretionary funds as gap-filler or funding of last resort
- c. Assure geographic diversity of funded projects
- d. Establish performance accountability framework
- e. Recommendations for sustainability