

**U.S. Department of Labor**

Employment and Training Administration  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210



June 6, 2022

The Honorable Gavin Newsom  
Governor of California  
1021 O Street  
Suite 9000  
Sacramento, CA 95814

Dear Governor Newsom:

Thank you for your waiver request submission to the U.S. Department of Labor (Department) regarding certain statutory and regulatory provisions of the Workforce Innovation and Opportunity Act (WIOA) and the accompanying plan to improve the statewide workforce development system (enclosed). The waiver requests were received March 15, 2022, as part of your recent WIOA State Plan modification. This letter provides the Employment and Training Administration's (ETA) official response to your requests and memorializes that California will meet the outcomes and implement the measures identified in its plan to ensure accountability agreed to by California 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 the State and local areas expend 75 percent local formula youth funds on out-of-school youth (OSY).

ETA Response: ETA approves for Program Year (PY) 2022 and PY 2023, which includes the entire time period for which states are authorized to spend those funds, the State's request to waive the requirement that local areas expend 75 percent of local youth formula funds on OSY. California may lower the local youth funds expenditure requirement to 50 percent for OSY. As a result of this waiver, ETA expects that the number of in-school youth (ISY) served will increase, and performance accountability outcomes for overall WIOA Youth (including both ISY and OSY) will remain steady or increase for the majority of the WIOA Youth performance indicators.

Requested Waiver: Waiver of WIOA Section 134(d)(5) and 20 CFR 680.195 to allow up to 30 percent of WIOA Title I Adult and Dislocated Worker local formula funds to be used for the provision of transitional jobs.

ETA Response: ETA approves the State's waiver request through June 30, 2024, for the WIOA Title I Adult and Dislocated Worker formula funding streams. ETA reviewed the State's waiver request and plan and has determined that the requirements requested to be waived impede the ability of California to implement its plan to improve the workforce development system. To accurately report participants in receipt of transitional jobs, California must record code value "6" in Participant Individual Record Layout (PIRL) element 1205 "Work Experience," and code value "1" in PIRL element 1211.

Requested Waiver: Waiver of WIOA Section 134(c) (3)(H)(i) and 20 CFR 680.720(b) in order to increase on-the-job training (OJT) employer reimbursement up to 90 percent for businesses with 50 or fewer employees.

ETA Response: ETA approves the State's waiver request through June 30, 2024, for the WIOA Title I Adult, Dislocated Worker, and Youth formula funds. ETA reviewed the State's waiver request and plan and has determined that the requirements requested to be waived impede the ability of California to implement its plan to improve the workforce development system. Existing statutory authority permits the State and its local workforce areas to increase the reimbursement rate for OJT contracts up to 75 percent. The State may also reimburse up to 90 percent for OJT for businesses with 50 or fewer employees. ETA expects the utilization of OJT to increase in the State as a result of this waiver.

The State must report its waiver outcomes and implementation of the approved waivers in the WIOA Annual Report. ETA will use this information to assess continued waiver approval and to identify promising practices that may be adopted more widely. ETA is available to provide technical assistance to you in support of your goals. If you have questions, feel free to contact my office at (202) 693-2772.

Sincerely,

A handwritten signature in black ink, appearing to read 'Brent Parton', with a stylized flourish at the end.

Brent Parton  
Acting Assistant Secretary

Enclosure

cc: Nancy Farias, Director, California Employment Development Department  
Nicholas E. Lalpui, Regional Administrator, ETA  
Latha Seshadri, Federal Project Officer, ETA

## **PY 2022 California waiver requests, excerpt from State Plan submission March 15, 2022**

California received DOL approval for three PY 2021-22 waivers that provided Local Boards with critical flexibility when assisting individuals and businesses affected by the COVID-19 pandemic. Approaching two years after the state's initial quarantine orders, certain sectors within California's labor market continue to experience devastating effects from unprecedented increases in both temporary and permanent layoffs, especially as supply chain disruptions and mutations of the COVID-19 virus threaten many businesses with permanent closure.

Due to the extent of the ongoing disruptions to the state's workforce and economy as a result of this persistent pandemic, and to give the state more time to fully assess the implementation and success of each waiver, CWDB and EDD are requesting DOL's approval to extend the current three WIOA waivers through the life of the current State Plan until June 30th, 2024:

- Waiver of WIOA Section 134(d)(5): This waiver allows up to 30 percent of WIOA Title I adult and dislocated worker local formula funds to be used for the provision of transitional jobs.
- Waiver of WIOA Section 134(c)(3)(H)(i): This waiver allows up to a 90 percent reimbursement of on-the-job training (OJT) costs for businesses with 50 or fewer employees.
- Waiver of WIOA Section 129(a)(4)(A): This waiver allows Local Boards to decrease the out-of-school youth (OSY) expenditure requirement from 75 percent to 50 percent.

### Waiver of WIOA Section 134(d)(5)

Under WIOA Section 134(d)(5), a Local Board may use up to 10 percent of their combined WIOA Title I adult and dislocated worker formula funds for the provision of transitional jobs. Extension of this waiver would continue to allow up to 30 percent of a Local Board's combined WIOA Title I adult and dislocated worker formula funds to be used for the provision of transitional jobs.

Nearly a quarter of the Local Boards in California placed participants in transitional jobs during PY 2019-20. Given the diverse and varying needs in California, the State has allowed the manner and degree to which Local Boards use transitional jobs to remain a local decision based on the needs of the participants and employers in their community. However, when the

pandemic hit, both Local Boards who were actively using the transitional jobs as well as those who had not used it recently voiced that they saw it becoming a critical service delivery strategy over the next couple years as many participants, especially those with barriers to employment, are struggling to attach or re-attach to the labor market.

California's intent in seeking this waiver is not to replace, reduce, or impact existing employees in any way. Rather the intent of the waiver would be to allow Local Boards increased flexibility to provide transitional jobs to individuals with barriers to employment in order to gain work experience and a source of income during these trying times. As a secondary benefit, the waiver could assist employers who may need or want to hire additional staff (on top of their existing staff) in order to rebuild their business operations as some shut down restrictions are being lifted but do not currently have the financial means to do so given the immediate drop in revenue that many businesses experienced when the pandemic hit.

#### *Actions to Remove State or Local Barriers*

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

#### *State Strategic Goals Supported By Waiver*

This waiver aligns with the following strategic goals outlined in the State Plan:

- Fostering demand-driven skills attainment
- Enabling upward mobility for all Californians
- Aligning, coordinating, and integrating programs and services

#### *Projected Programmatic Outcomes Resulting from Waiver Implementation*

The State of California anticipates the implementation of this waiver to have the following programmatic outcomes:

- Provide participants who are chronically unemployed or have inconsistent work history with work experience and reattachment to the labor market.
- Provide participants with wages that will assist in covering critical living expenses and provide stimulus to local economies.

- Provide a source of additional subsidized labor to employers who are attempting to rebuild their business operations after COVID-19 imposed shutdowns.

California placed 146 Adults and 31 Dislocated Workers in Transitional Jobs in PY 2019-20. While it can be hard to provide an exact number given the uncertain and ever changing economic conditions, California anticipates that increasing the percentage of adult and dislocated funds that can spend on transitional jobs to individuals with barriers to employment could lead to an estimated 10% increase in Adults and Dislocated Workers placed in transitional jobs for each full program year that the waiver is in effect.

### *Individuals Impacted by the Waiver*

The waiver is intended to assist both job seekers and employers. In particular, this waiver is meant to impact the following:

- Job seekers with significant barriers to employment, who are either:
  - Chronically unemployed
  - Have an inconsistent work history
  - Employers attempting to hire additional staff in order to rebuild their business operations after COVID-19 imposed shutdowns.

### *Monitoring Progress and Implementation*

As outlined in [Workforce Services Directive WSD20-13](#), Local Boards must receive approval from the State before using any of the waivers granted by DOL. This application process allows the State to make approvals for each individual waiver contingent on Local Boards meeting certain criteria and requirements related to that waiver. It also allows the State to track which Local Boards are using which waivers in order to determine its effectiveness at the end of each program year.

Because the current waiver was only applied to PY 2021-22, it is too early to determine true impact without a complete program year of data to compare against. However, 6 Local Boards are currently approved to utilize this waiver, with more Local Boards indicating they would like to apply in future program years if an extension of the current waiver is received.

### *Notice to Local Boards and Public Comment*

The Draft State Plan was posted for public comment for 30 days in order to allow the workforce community an opportunity to provide input.

### Waiver of WIOA Section 134(c)(3)(H)(i)

Small businesses are continuing to experience unprecedented challenges due to the COVID-19 pandemic as they struggle to maintain regular business operations, address staffing needs, and respond to changing consumer demand. Some, for instance, shifted their business model dramatically to pivot to production of critical personal protective equipment and supplies to tackle the shortage confronting healthcare and other frontline workers. Other employers had to quickly modify service-delivery methods, adapt processes to ensure contactless interactions between employees and customers, and maintain or increase stock of goods and services that are in high-demand.

Extension of this waiver would allow Local Boards to continue to provide additional relief to small businesses who may be more risk-averse when it comes to hiring and training new employees during this time of economic instability, by reimbursing a greater portion of their on-the-job training costs. This extension would also maximize a Local Boards' ability to support small businesses who are seeking to maintain and retrain their workforce to adapt to the rapidly changing economic landscape.

### *Actions to Remove State or Local Barriers*

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

### *State Strategic Goals Supported By Waiver*

This waiver aligns with the following strategic goals outlined in the State Plan:

- Fostering demand-driven skills attainment
- Enabling upward mobility for all Californians
- Aligning, coordinating, and integrating programs and services

### *Projected Programmatic Outcomes Resulting from Waiver Implementation*

The State of California anticipates the extension of this waiver to have the following programmatic outcomes:

- Provide small businesses with additional reimbursement of the OJT costs associated with training employees to meet existing or new business needs resulting from the COVID-19 pandemic.
- Provide job seekers, with barriers to employment, subsidized training opportunities to improve the prospect of obtaining and retaining employment.

California provided 1,172 Adults and 304 Dislocated Workers with OJT services in PY 2019-20. Consultation with Local Boards has revealed that approximately 75% of those were with small businesses that have 50 or fewer employees. While it can be hard to provide an exact number given the uncertain and ever changing economic conditions, California anticipates that increasing the reimbursement up to 90% could lead to an estimated 25% increase or an additional 250 participants placed in OJTs with small businesses for each year that the waiver is in effect.

### *Individuals Impacted by the Waiver*

The waiver is intended to provide assistance to both job seekers and employers. In particular, this waiver is meant to impact the following:

- Employers with fewer than 50 employees, especially those who are experiencing altered operations, service delivery, or other changes due to COVID-19.
- Job seekers with barriers to employment, especially those whose employment status has been effected due to COVID-19.

### *Monitoring Progress and Implementation*

As outlined in [Workforce Services Directive WSD20-13](#), Local Boards must receive approval from the State before using any of the waivers granted by DOL. This application process allows the State to make approvals for each individual waiver contingent on Local Boards meeting certain criteria and requirements related to that waiver. It also allows the State to track which Local Boards are using which waivers in order to determine its effectiveness at the end of each program year.

Because the current waiver was only applied to PY 2021-22, it is too early to determine true impact without a complete program year of data to compare against. However, 13 Local Boards are currently approved to utilize this waiver, with more Local Boards indicating they would like to apply in future programs years if an extension of the current waiver is received.

## *Notice to Local Boards and Public Comment*

The Draft State Plan was posted for public comment for 30 days in order to allow the workforce community an opportunity to provide input.

## Waiver of WIOA Section 129(a)(4)(A)

Under WIOA, Local Boards are required to spend at least 75 percent of their WIOA youth formula allocation on youth workforce investment activities for OSY. For California, an unintended consequence of this requirement has led to a reduction in funds that Local Boards could redirect toward serving ISY who are involved in the foster care system, juvenile justice system, and/or experiencing homelessness.

In California, foster care and juvenile justice youth have high rates of not completing high school, entering post-secondary education, or entering the workforce. While this waiver increases the flexibility that Local Boards have to enroll all eligible ISY, California is specifically hoping to see an increase in access to services for systems involved youth and youth experiencing homelessness so that they can be served through workforce development programs to support their continued engagement in education or training prior to disengagement.

## *Actions to Remove State or Local Barriers*

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

## *State Strategic Goals Supported By Waiver*

This waiver aligns with the following strategic goals outlined in the State Plan:

- Fostering demand-driven skills attainment.
- Enabling upward mobility for all Californians.
- Aligning, coordinating, and integrating programs and services.

## *Projected Programmatic Outcomes Resulting from Waiver Implementation*

While it can be hard to provide an exact number given the pandemic's impact on school reopening, and the variance in how many disconnected youth are in each Local Area, the CWDB anticipates that Local Boards who applied for and are utilizing this waiver will see an increase of approximately 15 percent, in



the total number of ISY that they enroll who meet the WIOA defined youth barriers related to foster care, justice involved, and/or homelessness. Using California's Program Year 2019-20 data as a benchmark, a 15 percent increase would equate to approximately 695 more ISY youth from the identified target populations enrolled statewide for every full program year the waiver is in effect.

### *Individuals Impacted by the Waiver*

This waiver is intended to increase the enrollment of ISY who meet one or more of the following WIOA defined ISY barriers:

- An offender.
- A homeless individual or runaway.
- An individual in foster care or who has aged out of the foster care system.
- An individual who has attained 16 years of age and left foster care for kinship guardianship or adoption, a child eligible for assistance under Section 477 of the Social Security Act, or in an out-of-home placement.

### *Monitoring Progress and Implementation*

As outlined in [Workforce Services Information Notice WSIN21-12](#), Local Boards must receive approval from the State before using any of the waivers granted by DOL. This application process allows the State to make approvals for each individual waiver contingent on Local Boards meeting certain criteria and requirements related to that waiver. It also allows the State to track which Local Boards are using which waivers in order to determine its effectiveness at the end of each program year.

Because the current waiver was only applied to PY 2021-22, it is too early to determine true impact without a complete program year of data to compare against. However, 17 Local Boards are currently approved to utilize this waiver, with more Local Boards indicating they would like to apply in future programs years if an extension of the current waiver is received.

### *Notice to Local Boards and Public Comment*

The Draft State Plan was posted for public comment for 30 days in order to allow the workforce community an opportunity to provide input.