

**U.S. Department of Labor**

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



September 16, 2020

The Honorable Jared Polis  
Governor of Colorado  
136 State Capitol  
Denver, CO 80203-1792

Dear Governor Polis:

Thank you for your waiver requests 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. The waiver requests were received June 30, 2020. This letter provides the Employment and Training Administration's (ETA) official response to your requests and memorializes that Colorado will meet the outcomes and implement the measures identified in its plan to ensure accountability agreed to by Colorado 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–Peysner Act in WIOA Section 189(i).

Requested Waiver: Waiver of WIOA Section 129(c)(4) and 20 CFR 681.590(a), which require local boards to spend a minimum of 20 percent of local area funds for the Title I Youth program to provide in-school youth (ISY) and out-of-school youth (OSY) with work experience activities described under WIOA Section 129(c)(2)(C).

ETA Response: ETA does not approve this waiver. ETA reviews states' compliance with this requirement through quarterly financial reports, and states have two years to meet the statutory requirement for work experience expenditures. As noted in Frequently Asked Questions, published at <https://www.dol.gov/agencies/eta/coronavirus>, ETA will take into account the months that the pandemic impacted the ability of local areas to place youth in work experiences. ETA will also provide technical assistance on delivering and accounting for work experience.

Requested Waiver: Waiver of WIOA Section 116(b) and (c), which requires states to include all program participants in the calculation of performance accountability measures.

ETA Response: ETA does not approve this waiver. ETA understands the challenges states may face meeting negotiated levels of performance given the circumstances surrounding the pandemic; however, performance accountability provisions are an important component of WIOA. It is critical for the performance accountability system that all states report on all participants consistently, including participants impacted by the pandemic. This information is necessary to objectively assess the impact of the pandemic on performance and will also inform future improvements to the statistical adjustment models. The Department uses a statistical adjustment model to calculate adjusted levels of performance at the end of the program year, which takes into account actual characteristics of participants served and the actual economic conditions experienced. ETA will continue to closely monitor the effect of the pandemic and its impact on services and performance outcomes.

Requested Waiver: Waiver of WIOA Section 134(d)(2)(A), which requires that funds allocated to the local area may be used to provide supportive services to adults and dislocated workers when participating in career or training services.

ETA Response: This waiver is not needed. American Job Centers may provide supportive services to customers that are enrolled in career or training services but may not be currently receiving those services.

Requested Waiver: Waiver of WIOA Section 134(d)(2)(B), which requires that funds allocated to the local area may be used to provide supportive services to adults and dislocated workers only when they are unable to receive supportive services through other programs.

ETA Response: ETA does not approve this waiver. This requirement is a participant eligibility requirement that cannot be waived under WIOA Section 189(i), which excludes participant eligibility from the Secretary's waiver authority. The State should continue to ensure that participants who can benefit from supportive services from other programs are enrolled in those programs. WIOA may fund supportive services when the State reasonably assesses the participant cannot be supported by other programs; such assessment does not require a formal rejection of services from other programs.

Requested Waiver: The State is requesting a 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 to assist in its response to the impacts of the pandemic.

ETA Response: ETA approves the State's waiver request through June 30, 2022, 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 Colorado 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. With this waiver, the State may also reimburse up to 90 percent for OJT in accordance with factors described at 20 CFR 680.730. ETA expects the utilization of OJT to increase in the State as a result of this waiver.

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 of Governor's reserve youth funds and local formula youth funds on OSY and calculation of the local area expenditure for each local area.

ETA Response: ETA approves for Program Year (PY) 2020, which includes the entire time period for which states are authorized to spend PY 2020 funds, the State's request to waive the requirement that the State expend 75 percent of Governor's reserve youth funds on OSY. ETA reviewed the State's waiver request and plan and has determined that the requirements requested to be waived impede the ability of Colorado to implement its plan to improve the workforce development system. The State may lower the expenditure requirement of Governor's reserve to 50 percent for OSY.

In addition, ETA conditionally approves for PY 2020, which includes the entire time period for which states are authorized to spend PY 2020 funds, the State's request to waive the requirement that local areas expend 75 percent of local youth formula funds on OSY. Colorado may lower the local youth funds expenditure requirement to 50 percent for OSY. Prior to implementation of this waiver, the State must update its waiver request to include projected quantifiable outcomes (i.e., for the core indicators under WIOA or shorter-term state-defined indicators) for WIOA youth served under the waiver. As a result of this waiver, ETA expects that the number of 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. The State is also approved to calculate the lowered 50-percent expenditure rate at the state level instead of individually for each local area.

Requested Waiver: Waiver of WIOA Section 116(d)(5), which requires each state to establish procedures, consistent with guidelines issued by the Secretary, in conjunction with the Secretary of Education, to ensure the information contained in the performance reports is valid and reliable.

ETA Response: ETA does not approve this waiver. The quality and integrity of program data is fundamental to assessing the effectiveness of workforce system services and the value to American taxpayers of funding WIOA programs. Performance accountability is a basic purpose of WIOA under 20 CFR 675.100(f) and, therefore, cannot be waived under the Secretary's waiver authority. ETA can provide technical assistance on different methods to monitor local areas performance reporting.

Requested Waiver: Waiver of the requirement that local youth programs provide each of the 14 youth programs elements required under WIOA Section 129(c)(2).

ETA Response: This waiver is not necessary. Local areas within Colorado already have the flexibility to provide the services needed by participants. As discussed in the WIOA regulation at 20 CFR 681.460, local programs must make each of the 14 program elements available to youth participants, but they do not need to provide all program elements to all youth participants. Further, as discussed in 20 CFR 681.420, local programs develop an individual service strategy based on the needs of each youth participant. Local areas in Colorado can already provide the specific services that best address the immediate needs of youth in Colorado and do not need a waiver to do so. Also, ETA programs have the flexibility to choose the best method of delivering program services and can provide services virtually if necessary. Security of customer data and its transmission, as well as ease of customer access, must be considered.

Requested Waiver: The State is requesting a waiver of WIOA 134(d)(4) and 20 CFR 680.800(a) to allow local areas to reserve more than 20 percent of Adult and Dislocated Worker funds for incumbent worker training (IWT) to assist in its response to the impacts of the pandemic.

ETA Response: ETA approves the State's waiver request through June 30, 2022, to permit local areas to increase the allowable threshold available for IWT from 20 to 50 percent. ETA reviewed the State's waiver request and plan and has determined that the requirements requested to be waived impede the ability of Colorado to implement its plan to improve the workforce development system. The following conditions apply to implementation of this waiver:

- Use IWT only to provide an employee skills to advance in their job or get skills to stay in a job (layoff aversion);
- Report individual records based on the Participant Individual Record Layout for all IWT participants through the Workforce Integrated Performance System; and
- Track employment retention and earnings outcomes to measure whether use of this waiver has a positive effect.

Requested Waiver: Waiver of 20 CFR 680.780 to adjust the six-month employment requirement for IWT.

ETA Response: ETA approves, through June 30, 2022, the State's request to adjust the six-month employment requirement for the purposes of conducting IWT. ETA reviewed the State's waiver request and plan and has determined that the requirements requested to be waived impede the ability of Colorado to implement its plan to improve the workforce development system. The following conditions apply to implementation of this waiver:

- Use IWT only to provide an employee skills to advance in their job or get skills to stay in a job (layoff aversion);
- Report individual records based on the Participant Individual Record Layout for all IWT participants through the Workforce Integrated Performance System (WIPS); and
- Track employment retention and earnings outcomes to measure whether use of this waiver has a positive effect.

The State must report its waiver outcomes and implementation of each approved waiver 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. The Department proposed additional flexibility in its budgets for Fiscal Years 2018 through 2021 to give governors more decision-making authority to meet the workforce needs of their states.

If you have questions, please contact my office at (202) 693-2772.

Sincerely,



John Pallasch  
Assistant Secretary for Employment and Training

Enclosure

cc: Joe Barela, Executive Director, Colorado Department of Labor and Employment  
Nicholas Lalpous, Regional Administrator, ETA Dallas Regional Office  
Kajuana Donohue, Federal Project Officer, ETA Dallas Regional Office



June 30, 2020

The Honorable Eugene Scalia  
Secretary of Labor  
United States Department of Labor  
200 Constitution Ave NW  
Washington, DC 20210

Dear Mr. Secretary,

On behalf of the Colorado Department of Labor and Employment, the state administrative entity for the Workforce Innovation and Opportunity Act (WIOA), I am respectfully requesting approval for the enclosed WIOA Waivers for the State of Colorado. These waivers were developed in accordance with WIOA, Section 189(i)(3) and are designed to address several barriers encountered by the state as we respond to the COVID-19 emergency.

The waiver requests address the following WIOA provisions:

1. **WIOA Section 129(c)(4)**, which requires that no less than 20 percent of Youth program funds allocated to the local area must be used to provide in-school youth and out-of-school youth with paid and unpaid work experiences that have as a component academic and occupational education.
2. **WIOA Section 116(b) and (c)**, which requires states to include all program participants in the calculation of performance accountability measures.
3. **WIOA Section 134(d)(2)(A)**, which requires that funds allocated to the local area may be used to provide supportive services to adults and dislocated workers when they are participating in career or training services.
4. **WIOA Section 134(d)(2)(B)**, which requires that funds allocated to the local area may be used to provide supportive services to adults and dislocated workers only when they are unable to receive supportive services through other programs.
5. **WIOA Section 134(c)(3)(H)(i)**, which permits the Governor or local boards to increase the amount of on-the-job training reimbursements up to 75 percent of the wage rate of a participant.
6. **WIOA Section 129(a)(4)(A)**, which requires states and local areas to expend at least 75 percent of all Governor's reserve and local formula youth funds on out-of-school youth.
7. **WIOA Section 116(d)(5)**, which requires each state to establish procedures, consistent with guidelines issued by the Secretary, in conjunction with the Secretary of Education, to ensure the information contained in the performance reports is valid and reliable.



8. **WIOA Section 129(c)(2)**, which requires local areas to provide each of the fourteen Youth program elements.
9. **WIOA Section 134(d)(4)**, which states that local boards may reserve and use no more than 20 percent of the Adult and Dislocated Worker funds allocated to the local area to pay for the federal share of incumbent worker training programs.
10. **20 CFR § 680.780**, which states that a worker must have an established employment history with the employer for 6 months or more to qualify as an "incumbent worker".

The waiver requests were posted for public comment for 30 days. We did not receive any comments during the public comment period, which ended on June 21, 2020.

We appreciate the opportunity to submit Colorado's waiver requests, and look forward to receiving the Secretary's approval. If you have any questions, please do not hesitate to contact me.

Respectfully,



Joseph Barela  
Executive Director

Cc: Nicholas Lalpui, Regional Administrator, Region 4  
Kajuana Donohue, Federal Project Officer, Colorado  
William Dowling, Director of Employment & Training, CDLE  
Elise Lowe-Vaughn, Director of Workforce Development Programs, CDLE