

U.S. Department of Labor

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



July 7, 2021

The Honorable Larry Hogan
Governor of Maryland
State House
100 State Circle
Annapolis, MD 21401

Dear Governor Hogan:

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 request was received on May 4, 2021. This letter provides the Department's Employment and Training Administration's (ETA) official response to your request. 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 (ETP) to report performance data on all students in a training program at WIOA Sections 116(d)(4)(A) and 122 and 20 CFR 677.230(a)(4) and (5) and 20 CFR 680.

ETA Response: ETA does not approve this waiver. As communicated in the previous approval for this waiver, dated June 9, 2020, and Training and Employment Guidance Letter (TEGL) No. 08-19, *Workforce Innovation and Opportunity Act (WIOA) Title I Training Provider Eligibility and State List of Eligible Training Providers (ETPs) and Programs*,¹ ETA is discontinuing state use of this waiver effective June 30, 2021. ETA acknowledges that collecting and reporting data on all students creates additional reporting responsibilities for training providers; however, public workforce system customers deserve quality training that has proven success of positive outcomes. The information WIOA requires is one of the few mechanisms available to identify which training provider programs truly make a difference. The State must report all student performance information in the Program Year (PY) 2021 report, which is due to ETA on October 1, 2022.

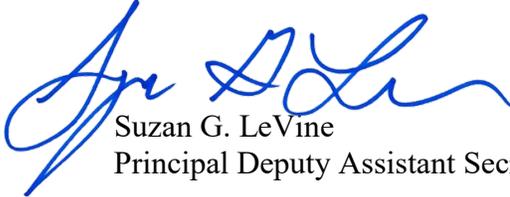
ETA staff will continue to work with Maryland to provide technical assistance to help overcome any data collection and reporting challenges, with the end goal of ensuring that the State has systems in place to report on all required data elements. ETA guidance issued in TEGL No. 08-19, and TEGL No. 03-18, *Eligible Training Provider (ETP) Guidance under the Workforce*

¹ Employment and Training Administration. TEGL No. 08-19: Workforce Innovation and Opportunity Act (WIOA) Title I Training Provider Eligibility and State List of Eligible Training Providers (ETPs) and Programs. https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=5389. Published January 2, 2020.

Innovation and Opportunity Act,² provides implementation suggestions for building a quality ETP list and recommendations for reporting.

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,



Suzan G. LeVine
Principal Deputy Assistant Secretary

Enclosure

cc: Tiffany P. Robinson, Secretary, Maryland Department of Labor
Leo Miller, Northeast Regional Administrator, ETA
Jael Delva, Federal Project Officer, ETA

² Employment and Training Administration. TEGL No. 03-18, *Eligible Training Provider (ETP) Guidance under the Workforce Innovation and Opportunity Act*. https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3527.
Published August 31, 2018.

Waiver Request: Eligible Training Provider List

(1) The statutory and/or regulatory requirements the state would like to waive. The state must clearly cite the statute and/or regulation(s) in its request, and ensure that the citations refer to the specific elements the state wishes to waive.

Through June 2023, the State of Maryland is seeking a waiver from the requirements outlined in Workforce Innovation and Opportunity Act (WIOA) Sections 116(d)(4)(A) and (B) and 122(d)(2)(A) and 20 CFR 677.230(a)(4) and (5), which require the collection and reporting of performance-related data on *all students* participating in training programs listed on the Maryland Eligible Training Provider List (ETPL). Under this waiver, Maryland will continue to collect and report performance data for *all WIOA-funded* participants in accordance with the above regulations.

Background

The U.S. Department of Labor approved Maryland's first waiver request on June 20, 2020 related to data collection for the ETPL. This waiver is set to expire June 30, 2021.

Maryland is currently in the process of updating its *WIOA Title I Training & Maryland's Eligible Training Provider* policy and plans to issue it in May 2021 based on lessons learned from its 2017 issuance. The policy includes eligibility guidelines, the approval/denial process, annual reporting requirements, and accountability metrics to ensure performance is adequate and meets pre-determined outcomes. While Maryland is proud of its efforts to deliver training opportunities to jobseekers and bolster customer choice, the State has learned that data collection requirements often prohibit quality providers from joining or remaining on the ETPL. Training sites do not always have the manpower or time necessary to report on all served participants.

Impact of COVID-19 in Maryland

2020 was an atypical year. Governor Larry Hogan acted early and aggressively to address the COVID-19 pandemic as it gained a footprint in Maryland, declaring a State of Emergency on March 5, 2020. As the crisis evolved, the Governor issued a series of Executive Orders aimed at encouraging social distancing to further slow the spread of disease. An Executive Order issued March 23, 2020 closed all non-essential businesses in the State, and a "Stay-at-Home" directive followed on March 30, 2020. Over the past year, like most State, federal, and local workforce agencies, the Maryland Department of Labor had to quickly shift priorities to focus on transitioning to a fully virtual environment and to offering programming and new initiatives as an economic response to the public health crisis. Due to the global health pandemic, MD Labor has faced new challenges that hampered the State's ability to take full advantage of its 2020 ETPL performance reporting waiver.

If afforded the opportunity to waive the performance reporting requirements on all non-WIOA funded individuals for July 2021 through June 2023, Maryland would be able to pilot the waiver in a focused, intentional manner that could coincide with an enhanced ETPL policy. This waiver would allow for training programs, community colleges, EARN Maryland providers, etc. to more

easily engage in the State's workforce system. This additional participation will produce long-term solutions to sustained skills gaps and personnel shortages and will enhance customer choice, as the State sees an increase of in-demand, high-quality training providers join the ETPL system.

(2) Actions the state has undertaken to remove state or local statutory or regulatory barriers. In some instances, a potential waiver could conflict with state or local laws and/or policies. The state must provide a discussion of the steps it has taken to remove any potential obstacles in the waiver request as appropriate. Quite often, state or local policies do not present a conflict for the request, and a simple statement indicating that there are no state or local barriers is sufficient.

The Maryland Department of Labor is unaware of any state or local statutory or regulatory barriers in Maryland related to implementing the requested waiver.

(3) State strategic goal(s). The state must precisely articulate the goals it seeks to achieve by requesting a waiver. Understanding the problem from the state's perspective can also help the Department identify other flexibilities if a request is beyond the Secretary's waiver authority. The state must also discuss how these goals relate to its Unified or Combined State Plan.

The goals of the waiver include:

- Addition of new providers to further diversify program offerings;
- Increased competition among providers that may lead to a decrease in associated training costs;
- Enhanced partnerships between Maryland State agencies, Local Areas, and community colleges that will allow for better customer service outcomes;
- Flexibility in assisting training provider who might not otherwise consider inclusion on the ETPL; and
- Increased customer choice.

This waiver request supports the vision of Maryland's State Plan and policies. The *Benchmarks of Success for Maryland's Workforce System* is the State's strategic framework to build system-wide effectiveness around WIOA. The *Benchmarks of Success* are built around five major strategic goals:

1. Increase the earning capacity of Maryland's workforce system customers by maximizing access to employment;
2. Increase the earning capacity of Maryland's workforce system customers by maximizing access to and use of skills and credentialing;
3. Increase the earning capacity of Maryland's workforce system customers by maximizing access to and use of life management skills;
4. Increase the earning capacity of Maryland's workforce system customers by eliminating barriers to employment; and,

5. Strengthen and enhance the effectiveness and efficiency of Maryland's workforce system.

(4) Projected programmatic outcomes resulting from implementation of the waiver. When developing a request, the state must provide an estimate of how the waiver will improve outcomes or provide other tangible benefits for jobseekers or employers. Thoughtful consideration of discrete improvements that a waiver may provide to the public workforce system will help the state develop a stronger waiver request and position the state to better evaluate waiver impact. For example, a state requesting to increase the employer reimbursement rate for on-the-job training (OJT) could estimate the number of additional participants or number of additional businesses that would make use of WIOA-funded OJT as a result of the waiver if approved. States have the discretion to determine how to measure a waiver's success and the specific data sources it intends to use to evaluate its impact.

The expected programmatic outcomes of this waiver include:

- Addition of new providers to further diversify program offerings;
- Increased competition among providers that may lead to a decrease in associated training costs;
- Enhanced partnerships between Maryland State agencies, Local Areas, and community colleges that will allow for better customer service outcomes;
- Flexibility in assisting training provider who might not otherwise consider inclusion on the ETPL; and
- Increased customer choice.

Despite the programming challenges in 2020, MD Labor saw an increase in community college participation with the ETPL. Since the State was granted the initial ETPL waiver in June 2020, MD Labor received 80 applications from community college programs to join (as of April 8, 2021). With more time to focus on the ETPL, Maryland would anticipate this trend to continue. However, absent a waiver for the reporting requirements, it is anticipated that the ETPL list and customer choice would be dramatically reduced.

(5) Alignment with Department policy priorities. The state must articulate how the waiver will align with the Department's policy priorities, such as supporting employer engagement, connecting education and training strategies, supporting work-based learning, and improving job and career results.

The *Benchmarks of Success for Maryland's Workforce System* is Maryland's shared vision of excellence and the core tenet of the State Plan. The waiver aligns with Maryland's policy priorities by enhancing the breadth of the ETPL to meet the needs of customers. The ETPL is a useful tool in reaching these goals as it allows customers to make informed choices about training that lead to good-paying jobs and self-sufficiency.

(6) Individuals, groups, or populations affected by the waiver. States must describe the potential impact of a waiver on various system stakeholders, including how the waiver will impact services for disadvantaged populations, persons with barriers to employment, or businesses. For example, a waiver request to decrease the 75 percent out-of-school youth expenditure requirement should include a discussion of how the state will continue to serve out-of-school youth as it increases spending for in-school youth projects. It should also discuss the potential benefits for in-school youth.

The waiver will benefit all populations, regardless of whether individuals are disadvantaged or have multiple barriers to employment, by providing the ability for the State to include a wider array of providers on the Maryland ETPL. Additionally, the waiver will ease performance-reporting burdens on providers like community colleges who often opt not to participate on the ETPL. MD Labor made progress in collaborating with community colleges in 2020; however, the State recognizes that there is more work to do. MD Labor seeks to further enhance this partnership from July 1, 2021-June 30, 2023 using this waiver.

MD Labor has received feedback from education and training partners that they are unable to meet the data collection and reporting requirements with their current capacity and, therefore, are prevented from participating in the ETPL. In particular, this feedback is shared by the Maryland Community College Association for Continuing Education and Training (MCCACET), representing the continuing education, workforce development, and community services divisions of Maryland's community colleges.

The requirement to report on all training program participants, even those that are not WIOA-funded, is the primary challenge cited by education and training providers in discussions with MD Labor about the ETPL. Without these programs on the ETPL, WIOA participants are faced with fewer training options. As a result, Maryland is seeing Local Boards rely on "Exception #2" noted in the State's *WIOA Title I Training & Maryland's Eligible Training Provider List* policy. "Exception #2" permits a Local Board to document determination that an insufficient number of eligible training providers exist in the Local Workforce Development Area (Local Area) on the ETPL to accomplish the purpose of a system of Individual Training Accounts and, in turn, allows for Local Areas to pursue training options that are not on the ETPL out of necessity. Local Boards are in regular conversations with their business partners and use training providers through "Exception #2" that provide the skills their employers demand. Ideally, Maryland would like to see these providers move onto the ETPL and continue to serve participants and businesses.

MD Labor works with a variety of education and training providers; however, many are not represented on the ETPL due to the data reporting requirements for non-WIOA funded individuals.

Employment Advancement Right Now Maryland (EARN) is a state-funded initiative that provides training opportunities for Maryland's jobseekers and those individuals seeking to obtain additional training to further their careers in a wide variety of fields. Partnerships have been

formed to advance careers in health care, construction, biotechnology, cybersecurity and information technology, transportation and logistics, and many more. EARN participants often reflect WIOA priority populations including ex-offenders, individuals with low levels of literacy or without a high school diploma, and those with low income. All partnerships are driven by industry needs and have a number of business partners involved in shaping each program. To date, over 1,000 employer partners are participating in the EARN Maryland program. *However, many EARN Maryland training providers are not represented on the ETPL due to the data and reporting requirements.*

EARN Maryland providers go through an extensive application vetting process, and as such, MD Labor is aware they are quality programs that lead to industry-recognized credentials and self-sustaining wages. EARN providers suggest that collecting the requisite information on all students, even those who are not WIOA funded, is a burden and barrier to their ability and interest in joining the ETPL.

MD Labor would like to see more proven, in-demand and high quality education and training programs, such as those under EARN, join the ETPL in order to better meet the needs of diverse populations with barriers to employment.

(7) State plans for monitoring waiver implementation, including collection of waiver outcome information. Just as states monitor the regular fiscal and programmatic implementation of WIOA at the local level, they must also consider how they will monitor a waiver that changes standard procedures. States must describe how they intend to oversee effective waiver implementation and any unique protocols that may be used in their waiver requests. For example, a state approved for a waiver to increase the OJT employer reimbursement rate would need to demonstrate fiscal adherence to the waiver-approved rate, and assess whether the waiver is allowing businesses to expand the use of OJT as a tool to increase the skills of workers.

MD Labor's Office of Workforce Information and Performance (OWIP) will evaluate the impact implementing the waiver has on Maryland's objectives and strategic goals. Maryland is updating its ETPL policy to reflect guidelines and processes for data collection. The WIOA Training Program Manager in OWIP will continue to request relevant items from training providers and outcomes will be included in the WIOA Annual Report.

The ETPL Program Manager will be responsible for conducting a biennial review of programs, in line with Training Employment Guidance Letter (TEGL) 08-19, including reviewing provider performance on WIOA indicators (employment second and fourth quarter after exit, median earnings, and credential attainment). If granted this waiver, Maryland Eligible Training Providers would still be able to provide data on all participants, including those that are not funded by WIOA, if they so choose. If providers collect or are able to collect this data on all of their students as part of their process, MD Labor will encourage them to share that data.

In 2017, Maryland's Department of Human Services (DHS) received over \$195 million in federal funding to build a groundbreaking technology platform that will transform the State's ability to deliver vital human services to Marylanders. Maryland's Total Human-services

Information Network, or MD THINK, is a cloud-based data repository that will break down traditional silos and data barriers between State agencies and provide integrated access to programs administered by agencies including DHS, the Maryland Department of Health, the Department of Juvenile Services, and MD Labor. MD THINK's use of a cloud-based platform is expected to deliver significant cost savings, streamline program operations, and increase agency productivity. Most importantly, enhanced data analytics will better enable State agencies to deliver the highest levels of service to Marylanders. The first phase of the nearly \$200 million revamping of the current system will focus on helping streamline and enhance service delivery to children and families via DHS programming.

MD THINK is the long-term solution to the State's data needs and limitations. Once MD Labor is active in the system, it will be able to make connections on the back-end of programming, enabling the Department to connect individual participant data without the use of Social Security Numbers. MD THINK will be phased in over the span of a few years.

MD Labor additionally applied for a USDOL Workforce Data Quality Initiative (WDQI) Round VIII grant in April 2021 to improve data reporting functionality on workforce programs in partnership with the Maryland Longitudinal Data System and the Maryland Higher Education Commission. This three year grant would also allow for Maryland to accelerate its data collection abilities on all WIOA funded participants.

MD Labor seeks a waiver to ETP data collection and reporting for the short-term.

(8) Assurance of state posting of the request for public comment and notification to affected local workforce development boards. WIOA does not prescribe a specific amount of time for states to post a potential waiver for comment, but it does require the state to demonstrate a reasonable opportunity for public review and comment by all stakeholders, including businesses and organized labor. The state must also provide affected local boards with notice and opportunity to comment on the proposed waiver. The Department cannot approve waiver requests that have not completed the public comment process.

Maryland's Local Areas contacted MD Labor Secretary Tiffany Robinson in October 2019 requesting that the State consider including the ETPL waiver request in the 2020 WIOA State Plan. The Maryland Workforce Association, a network representing the State's Local Boards, are aware of and are in support of this waiver request. All Local Boards, as well as workforce system stakeholders, constituents, and businesses were given an opportunity to provide feedback on the first waiver request during a public comment period for the 2020 WIOA State Plan over two weeks in January and February 2020. The Maryland Workforce Association has shared that they have seen progress in ETPL growth in 2020 and wish to continue that growth with an additional waiver in 2021. Additionally, in March 2021, the MCCACET requested that MD Labor seek continuation of the ETPL waiver with commitment to focus on growing the ETPL with in-demand, high quality training programs in an accelerated manner now that the pandemic is in a more manageable place.