

U.S. Department of Labor

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



July 7, 2021

The Honorable Roy Cooper
Governor of North Carolina
20301 Mail Service Center
Raleigh, NC 27699

Dear Governor Cooper:

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 13, 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.

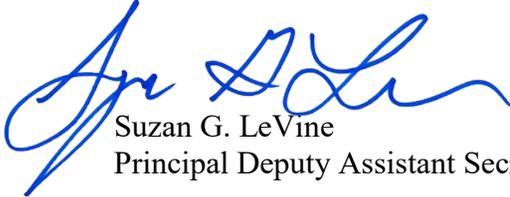
ETA staff will continue to work with North Carolina to provide technical assistance to help overcome any data collection and reporting challenges, with the end goal of ensuring that the State has systems in place to report on all required data elements. ETA guidance issued in TEGL No. 08-19, and TEGL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

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.

Workforce 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: Chett Mottershead, Assistant Secretary, North Carolina Department of Commerce
Lenita Jacobs-Simmons, Atlanta Regional Administrator, ETA
Rachel Floyd-Nelson, 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.



NC DEPARTMENT
of COMMERCE
WORKFORCE SOLUTIONS

Roy Cooper
GOVERNOR

Machelle Baker Sanders
SECRETARY

Chet Mottershead
ACTING ASSISTANT SECRETARY

May 13, 2021

Mr. Winston Tompoe
Regional Director, Office of State Systems
U.S. Department of Labor, Employment & Training Administration
Sam Nunn Federal Center
61 Forsyth Street, SW-6M5
Atlanta, GA 30303

Dear Mr. Tompoe:

North Carolina respectfully submits a waiver to exempt the state from the requirements outlined in WIOA at Sections 116 and 122, and at 20 CFR 677.30 and 20 CFR 680.400 thru 680.530, which require the collection and reporting of performance related data on all students participating in training programs listed on the state's Eligible Training Provider List (ETPL).

Your review and consideration for this waiver request is appreciated.

Sincerely,

DocuSigned by:

Chet Mottershead

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Chet Mottershead
Acting Assistant Secretary

cc: Mark Edmonds, Chief Operating Officer, DWS
Agreta Limerick, Director of Policy, Planning, and Accountability, DWS
Yvette German, Planning and Policy Development Manager, DWS

**North Carolina
Department of Commerce, Division of Workforce Solutions
WIOA Waiver Request**

1. Statutory and/or regulatory requirements the State would like to Waive:

The North Carolina Division of Workforce Solutions (DWS) is seeking a continued waiver from the requirements outlined in the WIOA at Sections 116 and 122, and at 20 CFR 677.230 and 20 CFR 680.400 thru 680.530, which require the collection and reporting of performance related data on all students participating in training programs listed on the State's Eligible Training Providers List (ETPL). A waiver for program years 2018, 2019, and 2020 were granted previously.

Under WIOA Section 116(d)(4)(A) and 20 CFR 677.230(a)(5), Eligible Training Providers must report performance data with respect to all individuals engaging in a program of study (or the equivalent). While DWS recognizes the value and importance of monitoring provider performance, requiring ETPs to produce data on all individuals instead of just WIOA-funded participants places an undue burden on ETPs 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. The U.S. Departments of Labor (DOL) and Education acknowledge this burden in their response to comments regarding 20 CFR 677.230 in the preamble of the WIOA Final Rule by stating, "The Departments are cognizant of the reporting burden the ETP performance report places on ETPs and do not want to place additional burden on these entities," however, there was no change to the regulatory text.

Further, ETPs and DWS are concerned that providing data on all individuals engaging in a program of study (or the equivalent) instead of WIOA-funded participants only may conflict with the Family Educational Rights and Privacy Act (FERPA), which protects the privacy of student education records. Generally, schools must have written permission from the parent or eligible student to release any information from a student's education record (34 CFR 99.30). Releasing student information on individuals who are not workforce system participants without his or her explicit consent may be in violation of federal law and compromise his or her personally identifiable information (PII). Additionally, requiring ETPs to provide data on all individuals instead of WIOA-funded participants may dissuade the institution from participating as a WIOA program provider, thereby significantly limiting consumer choice.

Under this waiver, ETPs will continue to collect and report performance data for all WIOA-funded participants in accordance with WIOA Section 116(d)(4)(A) and as specified at 20 CFR 677.230.

2. Actions the State has undertaken to remove State or local barriers

There are no state or local statutory or regulatory barriers to implementing the requested waiver. North Carolina regulations and policies are in compliance with current federal law.

North Carolina is in the process of returning the ETPL to state-run control but has been hindered in the ability to hire staff and move as quickly as initially planned due to the COVID-19 pandemic. Additionally, the shifting and tightening of resources at DWS, due to support provided to the Division of Employment Security (DES) with Unemployment Insurance (UI) efforts has hindered North Carolina's abilities to put systems in place to manage ETPs. Approval of this

waiver will afford the state time to implement new systems and put staffing in place to manage ETP responsibilities.

3. State strategic goal(s) and Department of Labor priorities supported by the Waiver

- (A) **supporting employer engagement;**
- (B) **connecting education and training strategies;**
- (C) **supporting work-based learning;**
- (D) **improving job and career results, and**
- (E) **other guidance issued by the Department.**

This waiver aligns with DOL's policy priorities in that it connects education and training strategies by reducing the reporting burden on ETPs, thus allowing them to focus more time and resources on producing successful outcomes for WIOA-funded participants; and further protects the privacy rights of ETPs' students who are not WIOA participants. This waiver allows for North Carolina to continue having the same level of provider participation, thus not limiting the choice of available approved training providers.

4. How the waiver complements DOL priorities (i.e. expansion of apprenticeship, improved employer engagement, etc.)

This waiver complements DOL priorities by allowing North Carolina to continue and expand the strong partnerships and relationships between training providers and the public workforce system. By reducing the reporting burden of ETPs, North Carolina can continue to offer work-based learning opportunities—on-the-job training, internships, pre-apprenticeships, and Registered Apprenticeships—as training paths to employment. This waiver allows for North Carolina to continue to determine local hiring needs and design training programs that are responsive to those needs.

5. Projected programmatic outcomes resulting from implementation of the Waiver

- **Ease undue reporting burden on ETPs**
Reporting performance data on all individuals engaging in a program of study (or the equivalent) consumes considerable time and expense. Reducing ETPs' reporting requirements to include only WIOA-funded participants would save considerable time and expense to allow ETPs to focus on education and training outcomes while still providing the required data on WIOA-funded participants.
- **Ensure protection of non-WIOA participants' PII**
Not reporting data for individuals who are not WIOA participants would reduce ETPs' liability for potential breach of those individuals' PII.
- **Programmatic Outcomes**
Reduction of the reporting burden on ETPs allows them to focus more time and resources on producing successful outcomes for WIOA-funded participants as well as for their non-WIOA students.

In addition, the waiver will provide the following:

- More available and varied training offerings for individuals utilizing ITAs via the public workforce system (greater customer choice).
- More training providers can lead to lower cost options.
- Greater utilization of ETPL by individuals pursuing training via ITAs.
- Stronger partnerships and relationships between training providers and the public workforce system.
- Enhanced ability of local boards to respond quickly and efficiently to immediate local job seeker and employer needs.
- More time for North Carolina to put systems and staff in place to manage ETPs.

6. Individuals, Groups or Populations benefiting from the Waiver

This waiver is intended to reduce the reporting burden on ETPs while still requiring them to report required performance data for all WIOA-funded participants.

Through this waiver, ETPs will be more willing to submit data on their WIOA-funded students and to remain on the ETP List, thus allowing the North Carolina workforce system to continue delivering essential training services that meet the needs of employers, job seekers, and workers.

Compared to other states, North Carolina has a significant number of providers, which allows individuals to have considerably more informed consumer choice. If this waiver is not implemented and the reporting burden is not lifted, ETPs may decide to not provide training services in North Carolina, which would result in a limited choice of providers.

7. How the State plans to Monitor Waiver Implementation, including the collection of Waiver outcome information

DWS will continue to collect data from ETPs on their WIOA-funded students and to submit that data via DWS' annual report to DOL.

North Carolina will collect and report information about waiver outcomes in the State's WIOA Annual Report. DWS has the capability to extract a sample of all student data using our longitudinal data system that collects data from the Community College system which compares all students to WIOA students served. Currently, North Carolina does not have a way to collect all student data from other schools.

8. Assurance of State posting of the requests for public comment and notification to affected Local Workforce Development Boards

Prior to the submission of this waiver request, all 23 local Workforce Development Board directors were notified of the intent of this request and were provided an opportunity to comment during the public review and comment period.

North Carolina issued a Policy Statement, which became effective July 1, 2018, notifying all local Workforce Development Boards and all current training providers of the new practice for eligible training provider approvals and performance reporting.