



December 9, 2022

The Honorable Jared Polis  
Governor of Colorado  
200 E. Colfax Ave., Rm. 136  
Denver, CO 80203

Dear Governor Polis:

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 September 29, 2022. This letter provides the Employment and Training Administration's (ETA) official response to your request 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-Peyser Act in WIOA Section 189(i).

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).

ETA Response: ETA approves the State's waiver request through June 30, 2024, 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:

- IWT may be used only to provide an employee skills to advance in their job such as in a career pathway, or to get skills to stay in a job (layoff aversion);
- The State must report individual records based on the Participant Individual Record Layout for all IWT participants through the Workforce Integrated Performance System; and
- The State must 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 the 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. 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 long horizontal flourish extending to the right.

Brent Parton  
Acting Assistant Secretary

Enclosure

cc: Joe Barela, Executive Director, Colorado Department of Labor and Employment  
Nicholas Lalpui, Regional Administrator, ETA  
Kajuana Donahue, Federal Project Officer, ETA

## **COLORADO WIOA WAIVER REQUEST**

**PREPARED BY THE COLORADO DEPARTMENT OF LABOR AND EMPLOYMENT**

Revised October 25, 2022

### **Waiver of the requirement for local boards to use no more than 20 percent of Adult and Dislocated Worker funding allocation for incumbent worker training**

Colorado requests a waiver of the limitation 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. Incumbent worker training is designed to meet the special requirements of an employer or group of employers to retain a skilled workforce or avert the need to lay off employees by assisting the workers in obtaining the skills necessary to retain employment. As Colorado's economy recovers from the COVID-19 pandemic, employers have identified a need to train and upskill their existing employees in order to retain talent and ensure that employees have a career ladder to advance with their employers. The limitation on incumbent worker training funds prevents Colorado from having the flexibility to direct resources wherever they are needed most to help sustain workers and businesses as they emerge from the pandemic.

Colorado received an influx of federal ARPA funds and WIOA increases of 30% for PY22. Since ARPA and WIOA funding can be used to pay for similar services and target similar populations, we have a substantial increase in the overall funding available to local workforce areas. However only WIOA funding can be used for IWT. Demand for jobseeker services has decreased this year with the low unemployment rate, while demand for incumbent worker training has increased as employers seek to retain a skilled workforce. If approved, two local areas are expected to utilize this waiver to increase services to workers needing upskilling to achieve self-sufficiency levels of pay or avoid layoffs, and to increase employee retention rates.

**1. The statutory and/or regulatory requirements the State would like to waive:**  
**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.

**2. Actions the State has undertaken to remove State or local barriers:**  
N/A - There are no state or local statutory or regulatory barriers to implementing the proposed waiver.

**3a. State strategic goal(s) supported by the waiver:**

GOAL 1: ALIGN STATE PRIORITIES AND FLEXIBLE RESOURCES TO ENSURE ALL COLORADANS HAVE ACCESS TO OPPORTUNITIES FOR QUALITY, LIFE-LONG EDUCATION CONNECTED TO THE FUTURE OF WORK.

The Colorado workforce development system is building on its strong foundation to ensure that all Coloradans have access to life-long learning opportunities connected to the future of work. Colorado has transformed its workforce system into a business and industry driven model. Colorado has aligned business services through the statewide business services team and maintains a customer-centric approach. Our services and activities to job seekers and businesses are designed to be responsive to local and statewide industry demands. Removing the cap on incumbent worker training funds will provide the flexibility needed to ensure all Colorado workers and businesses are set up for future success as we recover from the economic impacts of the pandemic.

**3b. Department of Labor priorities (i.e. expansion of apprenticeship, improved employer engagement, etc.) supported by the waiver:**

WIOA provides for a workforce system that is universally accessible and customer centered, with an emphasis on work based learning and classroom training that is job driven. Among the many training options available to Adults and Dislocated Workers is incumbent worker training, a learning strategy that allows local areas to serve individuals who are currently working. Providing more incumbent worker training will further increase the competitiveness of the employee and the employer and result in increased employer engagement with the workforce system.

**4. Quantifiable projected programmatic outcomes resulting from implementation of the waiver:**

Two local areas plan to utilize this waiver: Pikes Peak (El Paso/Teller counties) and Tri-County (Jefferson, Clear Creek, Gilpin counties). In PY21, 192 Title I participants received an IWT service in these two local areas (see attached IW report) and Colorado reported \$200,127.11 in IWT costs on the 9130 (see attached 9130).

Pikes Peak has implemented a competitive application process for employers seeking incumbent worker training to upskill their workforce and avert layoffs. In PY21, Pikes Peak served 103 incumbent workers in WIOA. For PY22, 28 employers applied for \$327,297 IWT funds. Due to funding limitations, Pikes Peak awarded \$166,025 to 13 businesses to train 274 incumbent workers. If this waiver is approved, Pikes Peak plans to launch another IWT cycle in January 2023. They will notify businesses that did not receive funding in fall 2022 that they can reapply for IWT funding and conduct additional outreach to businesses.

Tri-County has also implemented a competitive application process for employers seeking incumbent worker training to upskill their workforce and avert layoffs. In PY21,

Tri-County served 89 incumbent workers in WIOA. In PY22, Tri-County has enrolled 200 incumbent workers through other funding sources, but if this waiver is approved, Tri-County plans to launch one additional IWT cycle in January 2023 and two IWT cycles in PY23 using WIOA funds to align with post-secondary semesters. Sufficient businesses in the local area have already expressed interest in incumbent worker training to expand the model.

Colorado proposes the following quantifiable projected outcome as a result of this waiver: Increase the total number of incumbent workers served by WIOA by 20% each year in PY22 and PY23.

PY21: 192 (Actual)

PY22: 230 (Projected)

PY23: 276 (Projected)

**5. Individuals, groups or populations benefitting from the waiver:**

This waiver is intended to benefit incumbent workers and businesses, as well as job seekers that benefit from new job opportunities that will open up in these businesses as a result of the training support that the public workforce system provides to them. The waiver will also benefit individuals who have been adversely affected by the COVID-19 pandemic and the social and economic inequities that the pandemic exacerbated, to enter or advance in career pathways.

**6. How the State plans to monitor waiver implementation, including collection of waiver outcome information:**

CDLE has a long standing, comprehensive monitoring and performance accountability system that measures and evaluates results for job seekers and employers accessing Colorado's network of One-Stop centers. On a monthly and quarterly basis, CDLE reviews and analyzes client enrollment and service levels, program expenditures, and performance outcomes. In addition, State program monitors conduct quarterly reviews designed to assure that contract requirements are being met for all WIOA programs. On an annual basis, comprehensive compliance monitoring is conducted onsite.

Should this waiver request be granted, CDLE will regularly monitor the impacts of this waiver authority to ensure appropriateness and effectiveness, specifically tracking the amount and percentage of Adult and Dislocated Worker funds used for incumbent worker training and tracking employment retention and earnings outcomes in the two participating local areas to measure whether use of this waiver has a positive effect. CDLE will track and report on the outcomes for participants and CDLE will report on the waiver results in the WIOA Annual Report.

A similar waiver was previously approved but we have no results to report because no local areas implemented the previous waiver. Local workforce areas indicated a need

for the previous waiver at the time of submission, but ultimately, they did not exceed the 20% cap.

**7. Assurance of State posting of the request for public comment and notification to affected local workforce development boards:**

This waiver request was published on August 1, 2022, for a period of 30 days on the public websites maintained by the Colorado Department of Labor and Employment and the Colorado Workforce Development Council, allowing for public comment on its content and potential impact. In addition, electronic copies of the waiver were sent via email to local boards and one-stop operators. No comments were received.