

U.S. Department of Labor

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



March 19, 2021

The Honorable Andy Beshear
Governor of Kentucky
Office of the Governor
700 Capitol Avenue, Suite 100
Frankfort, KY 40601

Dear Governor Beshear:

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 December 22, 2020. This letter provides the 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–Peysner Act in WIOA Section 189(i).

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

ETA Response: ETA does not approve the Commonwealth's request at this time. While ETA is supportive of transitional jobs as a promising workforce development strategy, ETA has concerns regarding Kentucky's reporting of accurate expenditure and performance data, including expenditures and outcome data for WIOA participants that receive transitional jobs as a career service.

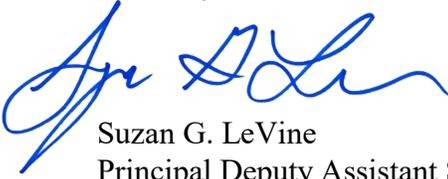
Should the Commonwealth wish to pursue additional funding flexibility for transitional jobs in the future, ETA requires the following actions of the Commonwealth:

- Amend ETA-9130 financial reports for the quarter ending September 30, 2020, to include expenditures on transitional jobs.
- Develop a process for local workforce development boards to track and report transitional job expenditures to the Commonwealth, so it can report that data appropriately on future ETA-9130 financial reports and monitor expenditures to ensure no local area exceeds the current 10-percent ceiling.

- Accurately report participants in receipt of transitional jobs. To do so, Kentucky must record code value “6” in Participant Individual Record Layout (PIRL) element 1205 “Work Experience” and code value “1” in PIRL element 1211.

The ETA Atlanta Regional Office will provide technical assistance to assist Kentucky in meeting the requirements listed above, to find ways the Commonwealth can utilize existing authority to maximize the benefits of transitional jobs for participants in the Adult and Dislocated Worker programs, and to identify ways the Commonwealth can more accurately report outcomes for participants in those programs and appropriately track expenditures, including on transitional jobs.

Sincerely,



Suzan G. LeVine
Principal Deputy Assistant Secretary

Enclosure

cc: Marty Hammons, Commissioner, Kentucky Department of Workforce Investment
Lenita Jacobs-Simmons, Regional Administrator, Employment and Training
Administration
Julian Hardy, Federal Project Officer, Employment and Training Administration



EDUCATION and WORKFORCE DEVELOPMENT CABINET
Department of Workforce Investment

Andy Beshear
Governor

500 Mero Street, 4th Floor
Frankfort, KY 40601
502-564-5331

Mary Pat Regan
Deputy Secretary

Jacqueline Coleman
Lieutenant Governor
and Secretary

Marty Hammons
Commissioner

December 21, 2020

Lenita Jacobs-Simmons
Regional Administrator
U.S. Department of Labor
Employment and Training Administration
61 Forsyth Street SW
Room 612
Atlanta, Georgia 30303

Dear Ms. Jacobs-Simmons:

The Commonwealth of Kentucky is submitting a waiver request concerning Transitional Employment. Under the Secretary of Labor's waiver authority outlined in Section 189(i)(3)(A) of the Workforce Innovation and Opportunity Act (WIOA) and 20 CFR and 679.600, the Secretary may waive certain provisions of WIOA Title I Subtitle A, B, and E and provisions found in Sections 8-10 of the Wagner-Peyser Act. WIOA Section 189(i)(3)(B) and 20 CFR 679.620 identify elements that must be included in a waiver request. The attached document provides background and justification for the waiver requested by Kentucky.

With this waiver, Kentucky will be able to maximize the impact of WIOA dollars and provide greater flexibility, increased options, and enhanced capacity to respond to participants' training needs.

Your review and immediate consideration of this waiver request are appreciated. Please contact me with any questions.

DocuSigned by:
sincerely,

Marty Hammons

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Marty Hammons
Commissioner
Department of Workforce Investment



Increase in Transitional Jobs Expenditure Threshold

Workforce Innovation and Opportunity Act Waiver Request Tool

Under the Secretary of Labor’s waiver authority outlined in Section 189(i)(3)(A) of the Workforce Innovation and Opportunity Act (WIOA) and 20 CFR and 679.600, the Secretary may waive certain provisions of WIOA Title I Subtitle A, B, and E and provisions found in Sections 8-10 of the Wagner-Peyser Act. WIOA Section 189(i)(3)(B) and 20 CFR 679.620 identify elements that must be included in a waiver request. A State may request a waiver in its overall Unified or Combined State Plan submission or modification. Or, if submitting separate from the State Plan submission, States may use this document as a tool to assist in developing and requesting a waiver. States may use their own format or form for a request, as long as elements required by WIOA and the regulations noted above are addressed. After reviewing a State’s initial request, the Employment and Training Administration (ETA) may ask the State for additional information if necessary, to complete its review.

To submit a waiver request, e-mail this completed form or State-developed document along with a cover letter to WIOA.Plan@dol.gov and the appropriate ETA regional office. ETA will also accept hard copy submissions.

Date: December 21, 2020

State: Kentucky

Agency: Department of Workforce Investment

Provide narrative for the following elements:

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.

The Commonwealth of Kentucky is seeking a waiver from the following Section(s) so that local areas may use up to 20 percent of WIOA Title 1 Adult and Dislocated Worker formula funds for the provision of transitional jobs:

WIOA 134 (d)(5) which allows Local Boards to reserve up to 10% funds allocated to the local area involved, under section 133 (b), to provide transitional jobs.

20 CFR § 680.195 states “The local area may use up to 10 percent of their combined total of adult and dislocated worker allocations for transitional jobs as described in § 680.190. Transitional jobs must be combined with comprehensive career services (see § 680.150) and supportive services (see § 680.900).”

Increase in Transitional Jobs Expenditure Threshold

Background

Across the nation governors are issuing Executive Orders to combat the COVID-19 crisis. Kentucky is no exception and has taken an aggressive approach to curbing the progression of the virus across the state to lessen health impacts and deaths across the state. However, the unfortunate repercussion caused business closures and employment loss statewide. Kentucky must prioritize services to individuals most impacted by the crisis, including low wage and traditionally lower skilled individuals who have been let go or furloughed from their current employers.

Every tool to provide services must be available and additionally, the state will need maximum flexibility to provide those services. Transitional jobs are an important employment strategy during an economic shock, such as COVID-19, especially for hardest-hit chronically unemployed individuals. Transitional jobs can provide employment, earned income, and connections to future unsubsidized employment to help stabilize individuals and families, well as throw a valuable lifeline to businesses who are struggling to keep their doors open. Increasing the allowable amount local areas can allocate toward transitional jobs will support these efforts and offer maximum local flexibility to meet locally determined demand for using transitional jobs as an employment strategy.

Transitional jobs have proven to be successful in Kentucky with as shown in the Transitions 2 Transformation Program in the Bluegrass Local Workforce Development Area. This program which focuses on those in recovery and reentry, has been successful in its placement of these hard-to-serve individuals. This waiver would provide additional flexibility to leverage local support for the employment of our most vulnerable individuals, including recently released incarcerated individuals. Furthermore, Kentucky believes transitional jobs will be an important strategy in economic recovery. Using a transitional job strategy will also help employers as they recover from the negative economic impact experienced because of the virus in two important ways. First, transitional jobs programs have shown to stimulate the local economy as participants tend to spend their earned income in the communities in which they live. Second, these programs have shown that they provide employers with candidates who are work ready, with in-demand skills, and help reduce turnover costs.

Approval of this waiver would contribute to the economic recovery and provide an essential avenue for participants that are traditionally long-term unemployed or underemployed with the support they need to secure employment.

Actions the state has undertaken to remove state or local statutory or regulatory barriers

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.

Increase in Transitional Jobs Expenditure Threshold

There are currently no state or local statutory or regulatory barriers to implementing the requested waiver. The Commonwealth of Kentucky regulations and policy align with current federal law. In the past in Kentucky, transitional jobs has not been fully utilized under WIOA; however, since 2018 local workforce development areas have been building strong partnerships with both organizations that provide housing, recovery, and other assistance to the hard-to-serve, as well as, local employers who see the value in being a second chance employer.

Kentucky believes this is the right employment strategy to offer local areas during this crisis. Kentucky will support local areas' assessments of demand for transitional jobs and will provide technical assistance to local areas through existing infrastructure. For instance, Kentucky can offer webinars dedicated to best practices for implementing a transitional jobs program, including performance measurement. This is highly effective and direct technical assistance available to all local workforce boards.

State strategic goal(s)

The state must precisely articulate the goals it seeks to achieve by requesting a waiver. The state must also discuss how these goals relate to its Unified or Combined State Plan.

Under Section C. of the Kentucky State Plan, there is a focus on the preparation of incarcerated and institutionalized individuals to return to the workforce. This includes education and training, as well as assistance to meet post release goals, such as employment. Transitional jobs programs address every facet of this as they address basic training in employability skills prior to placement in a work-based learning environment on their journey to full-time sustainable employment.

Governor Beshear has made it a priority under his administration to create inclusivity in the workforce. In July of 2020 he created the "Employment First Council". The Employment First Council has been tasked with increasing the participation of those with disabilities in the workforce, while reviewing policies and barriers that disincentivize their employment. This new project brings public and private entities to the table to increase employment among those with disabilities, a recognized group that would benefit from a transitional jobs program.

By increasing the allowable transitional jobs expenditure threshold from 10 percent to 20 percent, the individuals who will be exiting recovery and those being released from incarceration will be provided a clear and structured path to work-based learning and full-time sustainable employment.

Projected programmatic outcomes resulting from implementation of the waiver

Increase in Transitional Jobs Expenditure Threshold

The state must provide an estimate of how the waiver will improve outcomes or provide other tangible benefits for jobseekers or employers. 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 state estimates that the waiver will improve outcomes and provide other tangible benefits for jobseekers and employers in the following ways:

1. Increase in number of employers that use transitional jobs as a tool to find skilled workers.
2. Increase in number of participants using transitional jobs program as tool to gain employment and address barriers to employment.
3. Increase in the number of local workforce innovation boards using transitional jobs as a strategy to serve Adults with barriers to employment.
4. Sustained expenses for transitional jobs.

Alignment with Department of Labor's policy priorities

Describe 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;*
- *Improving job and career results; and*
- *Other priorities as articulated in guidance.*

This waiver aligns with not only the Department of Labor's priorities, but also with those of the Commonwealth of Kentucky. Within the Unified State Plan are examples of initiatives proving the importance of addressing employment barriers of our hardest to serve populations, while addressing the need for a pipeline of skilled workers for businesses. Specifically, increasing the funding toward transitional jobs supports DOL's priority for work-based learning and employer engagement strategies. Transitional jobs are a career service/work-based learning opportunity that can increase business usage of the workforce system by providing incentives to hire and train new workers. In addition, Kentucky's use of transitional jobs will support improved job and career results by providing individuals with work experience as well as the opportunity to develop essential workplace skills within the context of an employee-employer relationship.

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.

The waiver will positively impact both employers and jobseekers. For employers this waiver will provide an incentive to hire and train new workers, who have recently proven their hard and soft skills through the transitional job. Jobseekers who experience chronic unemployment will have greater access to employment opportunities and have the supports needed to stay employed after successfully completing a transitional job

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State plans for monitoring waiver implementation, including collection of waiver outcome information

States must describe how they intend to oversee effective waiver implementation and any unique protocols that may be used in their waiver requests.

The State will use the following approach for monitoring progress in implementation:

1. State staff who administer WIOA programming will provide ongoing technical assistance and oversight as it relates to the appropriateness and the effectiveness of this waiver. This information will be submitted regularly to the KWIB Continuous Improvement Committee.
2. Annual WIOA on-site programmatic reviews will include an evaluation of the impact the waivers have on programmatic goals and outcomes.
3. Additionally, the KWIB Continuous Improvement Committee will have the responsibility of ensuring the specific goals and outcomes achieved by the waiver are realized. Furthermore, the information gathered from the waiver will inform new or changes to policy as well as provide best practices.

This strategy ensures that the goals described above, as well as those outlined in the State's Unified Plan and the KWIB Strategic Plan, are consistent with established objectives of the WIOA and federal and state regulations.

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. Submit any comments or concerns collected in this manner and the outcome of the state's review of the public comments received. The state must also provide affected local boards with notice and opportunity to comment on the proposed waiver.

In accordance with the WIOA Regulations at 20 CFR 676.135, Kentucky submitted its Unified State Plan, which is subject to the requirements outlined in the WIOA Regulations at 20 CFR 676.130(d) for public review and comment. Accordingly, Kentucky will post this waiver request on our website for comment and review by required parties and the public.

Local Boards via Board members and/or Board staff as well as WIOA partners can comment during the public period, this includes participation in information webinars. Additionally, LWIB members/staff, WIOA partners, as well as other interested stakeholders take part in policy development.

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Please provide quantifiable projected programmatic outcomes, such as the projected number of additional individuals served, impact on WIOA performance indicators, etc.

Since July 1, 2020, the Kentucky Career Center-Bluegrass direct service staff have enrolled 68 new participants through the transitional employment provisions. All participants fall within the definition of priority area of service, and all are dually enrolled into Wagner-Peyser services as well. These participants meet the criteria for adult services and can utilize work-based learning opportunities through this transitional program. This program, and the additional participants reached, has allowed staff to significantly increase enrollment numbers as well as reach a higher number of individuals that fall into priority service populations. It has also served as an avenue to increase the amount of employer partners that have signed master agreements to serve as work-based learning sites, with 74 companies actively participating this year. The T2T program in Ky Bluegrass is an effort for job placement with the untapped labor pool, specifically individuals in recovery and reentry. This is a reflection of making great strides both during a global covid-19 pandemic all while continuing to face the issue of drug and substance abuse. The T2T program gives flexibility to work with an increased number of second chance employers in a broad range sector rather than limiting to our 5 high demand sectors.

In terms of projections, our numbers have been growing exponentially in terms of referrals and placements as word of this innovative program continues to spread. Just recently, we created a partnership with a homeless veteran's placement program and received three referrals that afternoon. We are seeing more and more of our most vulnerable population reach out for services, and this expansion will allow us to accommodate the needs of these individuals.

Does KY have comparable data for Adult and DW participants that received transitional jobs showing improved outcomes over participants that did not?

We do not have this data yet as we have been able to accommodate all participants to this point who have needed transitional jobs utilizing the 10% of available funding. When participants are placed in work-based learning programs, transitional funds are reserved for those whose employment in the five high demand sectors is not suitable.

For all other participants, programs are funded using traditional funding categories including Adult, Dislocated Worker and Youth. Because we are nearing reaching the 10% maximum, we will have to cease placing individuals in transitional placements, greatly limiting opportunities for those with some of the most difficult to overcome barriers.

Can KY provide quantifiable data showing how many individuals will qualify for transitional jobs as chronically unemployed/having inconsistent work history?

At this time, we would not be able to provide a quantifiable projection for this request because of the individualized nature of each participant and situation. All participants that receive services through the KCC are given individualized assessments to help in determining the best plan of action to suit their individual needs. While we can say with confidence that almost all will qualify as having chronic unemployment and inconsistent work history, this is not a metric that we capture. Based on our current trend of participants

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needing transitional assistance we expect to enroll 50-75 more this year. We do look for barriers beyond drug abuse, criminal justice involvement, homelessness and inconsistent work history is one item we review. We can also confidently say that through previous work with this population, this is an almost certainty because of substance abuse issues, incarceration and other underlying factors. It is also important to remember that all individuals with these barriers are not automatically placed in transitional jobs. The funding allocation for transitional employment is reserved for those individuals in which traditional funding is not available and need additional services or employment outside the five high demand sectors. For example, if an individual comes in to the Career Center from recovery, and they want to find employment in the manufacturing sector and we have a suitable placement, we would fund that individuals placement as Adult or Dislocated Worker (given the nature of their situation) and not Transitional.

How much are local areas in KY currently expending on transitional jobs? The current request does not indicate the current limit of 10% is being reached.

To date, KCC-Bluegrass has expended \$253, 579.58 on transitional employment opportunities, roughly equating to 7% of the available funding. At our current rate of spending, we would meet and exceed the current level of 10% in February 2021. Increasing the rate from 10% to 20% will allow for the enrollment of additional participants.

Can KY provide additional, quantifiable, data regarding the success of the Transitions 2 Transformation Program and more specific information regarding how the program serves the eligible population?

The success of the T2T program is evident in the not only the numerical data, but in the anecdotal information as evidenced in the success stories we have seen from participants. As previously mentioned, since July 1 we have served 68 new participants with work-based learning in the T2T program, and since its launch in 2019 the total number served is approaching 200. Those numbers just reflect participants that have been placed in paid services; the number of individuals that have received basic career services such as resume assistance, job referrals, and financial literacy would be well over 1,000 participants are staff are actively engaged with over 21 community partners in the Bluegrass serving those with the most severe barriers. I would encourage you to visit our T2T page at <https://ckycareers.com/t2t>, where you can scroll to the bottom of the page and see success stories from participants that have benefited from this program. More success stories are occurring each day, and we hope to continue this moving forward.

Can KY describe how they will utilize their existing COVID-19 Dislocated Worker Grant in unison with this waiver, if granted?

NDWG funding will take priority; individuals who are dislocated due to covid-19 will be funded through NDWG money as appropriate and fitting. Transitional funding is only used when the participant is not suitable for placement in one of the traditional funding streams or other initiatives. For example, with our NDWG, we are focusing on placing dislocated workers into CNA, CMA, or other training to help them gain employment, but also assist employers that are in dire need of the above-mentioned positions due to COVID. We are placing them

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with employer partners to assist with issues and positions related to the COVID-19 pandemic including well check screening, sanitary work environments, and other related functions. Some of the employers include nursing homes and public-school systems. Many individuals that come to us with the most severe backgrounds are not able to work in these settings due to potential triggers for relapse or legal issues. Adult and Dislocated Worker participants utilizing work-based learning must be in one of the five high demand sectors as identified by the local workforce development board. Often times, those in our most vulnerable populations are not either physically or mentally able to work in these settings and need to find work that accommodate their current situations. Transitional employment allows us to utilize employers and jobs outside of the high demand sectors to create opportunities to re-enter the workforce for those with the most severe barriers while helping them on the path to realizing their personal and vocational goals. Transitional employment funding is only utilized when other funding options are not suitable.