

U.S. Department of Labor

Assistant Secretary for
Employment and Training
Washington, D.C. 20210



December 10, 2024

The Honorable Kathy Hochul
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Dear Governor Hochul:

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 October 1, 2024. This letter provides the Employment and Training Administration's (ETA) official response to your request and memorializes that New York will meet the outcomes and implement the measures identified in its plan to ensure accountability agreed to by New York and ETA. This action is taken under the Secretary of Labor'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 requirements of WIOA Sections 133(a)(2) and 134(a)(2)(A) to allow flexibility to use up to 50 percent of funds reserved by the Governor to provide statewide rapid response activities under WIOA Section 134(a)(2)(A) to also provide statewide employment and training activities in the first year of funding availability.

ETA Response: ETA approves for Program Year 2024, 2025, and 2026, the State's request to waive the spending requirements of WIOA Sections 133(a)(2) and Section 134(a)(2)(A) to enable the State to use up to 50 percent of funds reserved by the Governor to provide statewide rapid response activities under WIOA Section 134(a)(2)(A) to also provide statewide employment and training activities in the first year of funding availability. ETA reviewed the State's waiver request and plan and has determined that the requirements requested to be waived impede the ability of State to implement its plan to improve the workforce development system.

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 blue ink, which appears to read "José Javier Rodríguez", is placed below the word "Sincerely,".

José Javier Rodríguez

Enclosures

cc: Roberta Reardon, Commissioner, New York State Department of Labor
Gregg Weltz, Boston Regional Administrator, ETA
Kate Banimenia, Federal Project Officer, ETA

WE ARE YOUR DOL



Kathy Hochul, Governor
Roberta Reardon, Commissioner

August 8, 2024

Gregg Weltz
Regional Administrator
U.S. Department of Labor
Employment and Training Administration
25 New Sudbury Street
Room E-350
Boston, MA 02203

Dear Mr. Weltz:

New York State (NYS) respectfully submits the attached waiver request to the NYS Workforce Innovation and Opportunity Act (WIOA) Combined Plan. The request is being submitted in accordance with WIOA and guidance provided at www.dol.gov/agencies/eta/wioa/waivers.

This waiver will allow the NYS Department of Labor (NYSDOL) flexibility to focus on funding the most salient State Workforce Agency needs, such as WIOA Adult Priority of Service customers, customers with disabilities, innovative highway infrastructure workforce programs, expanding Registered Apprenticeship programs, performance incentive grants for Local Workforce Development Boards, and additional training and supportive services for Adult and Dislocated Worker customers. This flexibility in spending will enable NYSDOL to expedite obligations and expenditures and accelerate services to customers most in need, without negatively impacting those in need of Rapid Response services.

The review and timely consideration of this waiver are appreciated. Please contact LWDB@labor.ny.gov with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher White".

Christopher White
Deputy Commissioner for Workforce Development

Waiver to allow the flexibility of using up to 50% of State-level Dislocated Worker (DW) Rapid Response funds in the first year of availability for broader State Workforce Agency (SWA) needs.

Statutory and/or regulatory requirements to be waived

Language that requires States to use funds reserved by the Governor for the State under Workforce Innovation and Opportunity Act (WIOA) Section 133(a)(2) for Statewide Rapid Response activities listed in WIOA Section 134(a)(2)(A).

Actions undertaken to remove state or local barriers

There are no State or local statutory or regulatory barriers to implementing the proposed waiver.

Goals and expected programmatic outcomes of waiver

This waiver will allow New York State (NYS) to obligate and expend up to 50% of State-level DW Rapid Response funds in the first year of availability for broader SWA needs during Program Years (PYs) 2024, 2025, and 2026. As of June 30, 2024, only \$7.8M (28.82%) of the total \$27M in PY 2023 Rapid Response funding has been expended, and there is currently approximately \$43M unobligated between PY 2023 and PY 2024 Rapid Response funds.

Following the COVID-19 pandemic, the NYS Unemployment Insurance (UI) rate has continued to decline, as has the number of layoffs. UI Initial Claims fell from 38,337 during the week ending on 01/06/2024 to 12,220 during the week ending on 10/19/2024, and the total weekly UI beneficiaries fell from 158,015 for the UI benefit week ending on 01/06/2024 to 104,444 for the UI benefit week ending on 10/19/2024.

DWs in NYS have been easily finding re-employment, with less need for training and employment programs. According to the WIOA Program Year (PY) 2023 Quarter 4 Primary Indicators of Performance Report for NYS, the DW Employment Rate 2nd Quarter After Exit indicator had 68,500 positive outcomes and achieved 123.8% of the Statewide goal for this indicator, and the DW Employment Rate 4th Quarter After Exit had 68,292 positive outcomes and achieved 119.5% of the Statewide goal for this indicator. However, outcomes for Adults are lagging. In the rolling four quarter Adult Priority of Service report, only 8,811 positive outcomes were reported with a Statewide rate of 47.6%.

NYS will use up to 50% of Rapid Response funds in the first year of availability to address the most salient SWA needs:

- The ability to fund work readiness training, including digital literacy. As evidenced by the annual Job Seeker and Business [surveys](#) conducted by the NYS Department of Labor (NYSDOL) and The Business Council of NYS, work readiness or soft skills, continue to be in-demand among both businesses and job seekers. 2024 survey results indicate non-technical skills such as communication, problem solving, time management, and teamwork are among the most sought-after skills by businesses, while job seekers' top desired training is in digital skills.

To meet this need, NYSDOL developed a \$5M Work Readiness Training (WRT) Request for Proposals, which closed on October 25, 2024. Based on the 93 proposals submitted in response to this RFP, available funds will only meet a small fraction of the need. With a maximum funding request of up to \$350,000 per proposal, NYSDOL will only be able to fund 15-20 programs for approximately 1,500 trainees. Should this waiver be approved, NYSDOL would have the ability to expand the WRT

program and provide organizations funding to train another approximately 5,000 individuals requesting these skills;

- The continued expansion of Registered Apprenticeship programs across the State via re-released solicitations for NYSDOL's Apprenticeship Expansion Grant (AEG) and Direct Entry Pre-Apprenticeship (DEPA) programs. Under AEG-4, which closed August 5, 2024, nine (9) awards have been made totaling over \$2.3M for 170 apprentices. We expect to make an additional 20 awards for approximately \$4.2M and 285 apprentices, which far surpasses the \$3M made available in State Apprenticeship Expansion Formula (SAEF) funding for this opportunity. Likewise, under DEPA, which closed June 28, 2024, 20 awards have been made totaling over \$3.2M for 575 trainees. We expect to make two (2) more awards for \$390,000 and 54 trainees, which will bring all awards over the \$2M originally dedicated to this funding opportunity.

Due to the continued popularity of these funding opportunities and significant focus on apprenticeship within NYS, NYSDOL expects to re-release these apprenticeship solicitations in 2025, but will only be able to do so with the approval of this waiver as there is not currently federal funding available to continue these programs;

- Performance Incentive Grants for Local Workforce Development Boards (LWDBs) meeting their annual PY negotiated performance goals. These incentive payments will be provided to LWDBs successfully meeting or exceeding each performance goal, and this funding can be used by the LWDBs for any allowable WIOA activities, including services to Adults, DWs and Youth. These awards would be issued in January 2025 to approximately 15 local areas who met all performance goals for PY 2023; and
- Additional Training and Supportive Services distributions to LWDBs for both WIOA Adult and DW customers. LWDBs are eligible for these distributions if they met an 80% obligation rate for the proceeding PY and can show they are on track to do so again for the current PY. \$2.5M was issued in early June 2024 under Round 1 of this funding, which must be expended by June 30, 2025. To date, 155 additional individuals have been served with this funding, for a total of \$216,482 in expenditures. Round 2 is expected to be issued in late fall 2024, to be expended by June 30, 2026.

Note: Both the Performance Incentive Grants and Training and Supportive Services distributions made from State-level WIOA funds are intended to assist LWDBs with the declining local formula WIOA allocations that have been the trend for the last two years and are expected to continue. Anecdotal information from local areas who received Training and Supportive Services distributions under Round 1 shows these additional funds have been extremely helpful in conducting outreach to potential participants, including Adult Priority of Service customers; critically analyzing the training needs of their communities, particularly for those from marginalized communities; and increasing and/or expanding quality training programs within the local area.

Allowing the use of a portion of Rapid Response funds for these purposes in the first year of availability will improve NYSDOL's overall management of WIOA funds, speed up obligations and expenditures, and accelerate services to customers most in need, without negatively impacting those in need of Rapid Response services. It will also improve performance measures/metrics, particularly the NYS Adult Priority of Service metric, by incentivizing local areas to serve customers most in need and ensure staff input accurate data entry.

Alignment with USDOL policy priorities

This waiver will allow the State flexibility to improve outcomes for WIOA customers, as well as align with the requirements in WIOA Sections 134(a)(2)(B) and 134(a)(3) and the allowable Statewide employment and training activities in 20 CFR §682.210.

Note: The Rapid Response teams in NYS, composed of both State and local partners, are highly experienced at serving individuals impacted by layoffs and other dislocations, and sufficient funding will remain available to support these targeted teams.

Likewise, NYSDOL is already utilizing additional State funding for layoff aversion purposes, such as partnering with the New York Power Authority (NYPA) to assist workers from fossil fuel industries to transition to clean energy jobs. Notices of Obligational Authority (NOAs) will go to 18 LWDBs to provide a total of \$4M in the up-skilling or re-skilling of workers, and another \$5M will be available through a RFP to expand or create Statewide clean energy training or pre-apprenticeship programs. Supportive services funding will be available to participants in both programs.

Any additional Rapid Response-funded activities, including those tied to any potential future disaster or mass layoff, will continue to occur using State reemployment funds should this waiver be granted. NYS would also utilize existing virtual resources built up during the COVID-19 pandemic, including the Virtual Career Center, to support the response to a disaster. Lastly, and only if necessary, NYSDOL would postpone or cancel current or future funding opportunities to utilize those funds for any additional Rapid Response needs.

Individuals impacted by the waiver

This waiver will positively impact:

- Individuals requiring basic work readiness/soft skills to move forward with additional training or direct employment, and businesses seeking workers with these necessary skills;
- WIOA Adult, DW, and Youth customers, including Priority of Service Adults, with little or no employment history in providing additional training and/or work-based learning opportunities/apprenticeships leading to employment; and
- WIOA customers requiring supportive services.

Process for monitoring progress and the collection and reporting of outcomes related to the waiver

In conjunction with NYSDOL's ongoing fiscal and programmatic monitoring of its State-level contractors and LWDA subrecipients, NYSDOL will monitor progress and ensure accountability for Federal funds in connection with this waiver by continually reviewing customer case management data, performance reporting, and expenditures for WIOA Adults, DWs, and Youth.

Notice to affected local boards

LWDBs were informed of the waiver request before submission, via an email sent to all LWDB Executive Directors on July 26, 2024, notifying them of the 10-day public comment period. Should the waiver be granted, NYSDOL will also issue an electronic notice that will be disseminated to the Workforce Development community in the State, including LWDB Executive Directors and Chairs.

Public Comment

This waiver request was posted for public comment on the NYSDOL Workforce Planning [webpage](#) for a 10-day comment period. There were no comments received regarding the waiver.