



December 1, 2021

The Honorable Michelle Lujan Grisham
Governor of New Mexico
State Capitol
490 Old Santa Fe Trail Room 400
Santa Fe, NM 87501

Dear Governor Lujan Grisham:

Thank you for your waiver requests 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 requests were received on September 20, 2021. This letter provides the Employment and Training Administration's (ETA) official response to your requests and memorializes that New Mexico will meet the outcomes and implement the measures identified in its plan to ensure accountability agreed to by New Mexico 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: Waiver associated with the requirement at WIOA Section 129(a)(4)(A) and 20 CFR 681.410 that the state and local areas expend 75 percent of Governor's reserve youth funds and local formula youth funds on out-of-school youth (OSY).

ETA Response: ETA approves for Program Year (PY) 2021, which includes the entire time period for which states are authorized to spend PY 2021 funds, the State's request to waive the requirement that the State expend 75 percent of Governor's reserve youth funds on OSY. ETA reviewed the State's waiver request and plan and has determined that the requirements requested to be waived impede the ability of New Mexico to implement its plan to improve the workforce development system. New Mexico may lower the expenditure requirement of Governor's reserve funds to 50 percent for OSY.

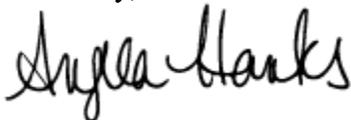
In addition, ETA approves for PY 2021, which includes the entire time period for which states are authorized to spend PY 2021 funds, the State's request to waive the requirement that local areas expend 75 percent of local youth formula funds on OSY. New Mexico may lower the local youth funds expenditure requirement to 50 percent for OSY. As a result of this waiver, ETA expects that the number of in-school youth (ISY) served will increase and performance accountability outcomes for overall WIOA Youth (including both ISY and OSY) will remain steady or increase for the majority of the WIOA Youth performance indicators.

Requested Waiver: The State is requesting a waiver of WIOA Section 134(c) (3)(H)(i) and 20 CFR 680.720(b) in order to increase on-the-job training (OJT) employer reimbursement up to 90 percent for businesses with 50 or fewer employees.

ETA Response: ETA approves the State's waiver request through June 30, 2022, for the WIOA Title I Adult, Dislocated Worker, and Youth formula funds. ETA reviewed the State's waiver request and plan and has determined that the requirements requested to be waived impede the ability of New Mexico to implement its plan to improve the workforce development system. Existing statutory authority permits the State and its local workforce areas to increase the reimbursement rate for OJT contracts up to 75 percent. The State may also reimburse up to 90 percent for OJT for businesses with 50 or fewer employees. ETA expects the utilization of OJT to increase in the State as a result of this waiver.

The State must report its waiver outcomes and implementation of the approved waivers 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,



Angela Hanks
Acting Assistant Secretary

Enclosure

cc: Ricky Serna, Acting Cabinet Secretary, New Mexico Department of Workforce Solutions
Nicholas Lalpui, Dallas/San Francisco Regional Administrator, Employment and Training Administration
Bernarda Cutter, Federal Project Officer, Employment and Training Administration

State of New Mexico
Waiver Request

Statutory and Regulatory Sections to be Waived: WIOA §129(a)(4)(A) and 20 CFR 681.410

The New Mexico Department of Workforce Solutions (NMDWS) is seeking a waiver of the requirement under Workforce Innovation and Opportunity Act (WIOA) §129(a)(4) and 20 CFR 681.410 that the state and local workforce development areas spend not less than 75 percent of youth funds to provide services to out-of-school youth (OSY).

This request is for a waiver to allow the state and all workforce areas in New Mexico the flexibility to direct up to 50 percent of youth funds to deliver workforce services to in-school youth (ISY), while continuing to serve OSY as a priority population.

Actions undertaken to remove state or local barriers:

There are no state or local statutory or regulatory barriers to implementing the requested waiver.

Department of Labor priorities supported by the Waiver:

The requirement to expend 75 percent of youth statewide and formula funds on OSY prohibits workforce areas from using discretion when serving youth based on local demographics, resources, economies, and other labor market factors. The requirement weakens Title I's ability to design and deliver meaningful career pathway programs to all youth, regardless of school status. The 75 percent OSY expenditure requirement limits the local areas ability to carry out initiatives that provide necessary educational and training experiences for students that meet the needs of employers.

WIOA's emphasis on credential attainment, this flexibility would allow the workforce areas to provide work-based learning opportunities, such as work experience (WIO §129(c)(2)(C) and 20 CFR 681.600), to ISY. Providing more work-based learning opportunities to ISY support (strengthen) New Mexico's State Plan commitment to development activities that enhance the choices available to eligible youth and encourage them to complete secondary education, enroll in postsecondary education and advance training, progress through a career pathways and enter into unsubsidized employment that leads to economic self-sufficiency (WIOA §129(b)(2)).

The NMDWS has recently supported the work being done in the secondary school system to improve the state's Career and Technical Education. The New Mexico State Plan identifies this initiative as a partnership between the New Mexico Public Education Department and their College and Career Readiness Bureau. Together the agencies are implementing strategies and activities to promote career exploration and readiness through K-12. Both agencies strive to align resources authorized under WIOA and under

the Strengthening Career and Technical Education for the 21st Century (Perkins V) Act. The goals of this partnership are to:

- Align Career and Technical Education (CTE) programs offered through high schools with high demand sectors;
- Facilitate partnerships between the school and business community to grow and expand opportunities for students participating in CTE programs in public schools; and
- Integrate the vision of the state's CTE program with the goals of the regional workforce boards to promote integrated and well-organized integration of education and workforce.

Planned activities moving through the next four years include:

- Increased understanding and utilization of labor market information to drive CTE planning at both the public school and community college level. Additional attention will be given to demonstrating how to utilize existing tools, data, and resource available to enhance decision making and program implementation.
- Assessment of work-based learning opportunities available to students participating in CTE and expansion of quality and number paid and unpaid internships, apprenticeship, and work-based experiences. Specific focus will be given to growing the number of businesses engaged with CTE programs, especially through offering work-based learning aligned with priority sectors.
- Commitment to review and remove barriers that impede program implementation.

Reducing the OSY expenditure requirement to 50 percent would allow the workforce areas to continue serving the OSY population while also increasing their ability to meet the needs of ISY throughout the state in alignment with WIOA's intent by supporting career pathways and preparing young people for in-demand careers in the workforce, regardless of the youth's school status. Under this waiver the local areas would continue to serve OSY as a priority population and track OSY services, expenditures, and performance.

This waiver aligns with DOL's policy priority in that it:

- Focuses on ensuring that eligible youth achieve secondary and postsecondary educational success;
- Increases youths' access to opportunities for the education, training, employment and support services that they need;
- Align with WIOA's intent by supporting career pathways and the preparation of young people for in-demand careers; and
- Ensures that ISY do not fall into an at-risk category because of expenditure restrictions.

Strategic Goals of the Waiver:

- **Serve youth regardless of school status.**
Allowing local area flexibility to increase spending on providing education and training to ISY would increase workforce opportunities available to all youth and

help prevent at-risk youth from dropping out of school or not pursuing additional education and training that would lead to economic self-sufficiency.

- **Serve ISY in rural communities.**

Help ISY living in rural workforce areas overcome the unique economic and employment challenges facing rural communities.

- **Serve youth according to local need.**

Provide local flexibility to serve OSY and ISY in a way that best meets the needs of the workforce area according to population, resources, and other labor market factors.

- **Continue serving out-of-school youth as a priority population.**

The local areas will continue to give priority of service to OSY.

Populations impacted by the waiver:

This waiver is intended to benefit at-risk ISY who face barriers to education, training and employment. OSY will continue to be served as a priority population in accordance with WIOA. The local areas will benefit from increased flexibility to develop solutions to better serve youth according to local need.

Projected Programmatic Outcomes Resulting from Waiver Implementation:

NMDWS anticipates that Local Boards who utilize this waiver will see an increase of approximately 25%, in the total number of ISY that they enroll who meet the WIOA defined youth barriers. Using Performance data from Program Year 2019 as a benchmark a 25% increase would equate to approximately 280 more ISY served.

Monitoring waiver implementation progress:

NMDWS will continue monitoring state and local area performance to assess the effectiveness of this waiver using both state and federal accountability systems to ensure that all negotiated performance measures are met including expenditure percentages, results are accurately reported and will provide necessary technical assistance to the local Boards, one-stop operators and service providers. As part of the monitoring and performance accountability process, NMDWS will collect data on waiver outcomes, which will be included in the WIOA Annual Report. Any waiver renewal requests will include the most recent available outcomes data.

Public Comment:

NMDWS published the waiver for public comment for 30 days ending August 7, 2021. NMDWS received two comments for this waiver, both comments were in support of the waiver. One letter of support was from the New Mexico Department of Public Education. The other letter of support was from the Northern Area Local Workforce Development board.



Ricky Serina, Acting Cabinet Secretary
Department of Workforce Solutions

Date: 9/16/21

**State of New Mexico
Waiver Request
On-the-Job Training (OJT) Employer Reimbursement**

Federal statutory/regulatory requirements to be waived:

Pursuant to the waiver requirements and request process of Title I of the Workforce Innovation and Opportunity Act (WIOA) (at WIOA §189(i)(3)(B); 20 CFR §679.620 and TEGL 8-18) and the Wagner-Peyser Act, the New Mexico Department of Workforce Solutions (NMDWS), the designated state workforce agency for the State of New Mexico, is requesting a waiver of the requirements of WIOA §134(c)(3)(H)(i) and 20 CFR §680.720(b) in order to increase on-the-job training (OJT) employer reimbursement up to 90 percent for businesses with less than 50 employees. Pursuant to 20 CFR §680.720, employers may be reimbursed up to 50 percent of the wage rate of an OJT participant, and up to 75 percent using the criteria in 20 CFR §680.730, for the extraordinary costs of providing the training and additional supervision related to the OJT. This waiver request would allow for a sliding scale for OJT training employer reimbursements that ranges from 50 - 90 percent, dependent on the number of employees. New Mexico is requesting this waiver for the WIOA Title I 2021 program year (July 1, 2021 - June 30, 2022).

Actions for the removal of state or local statutory or regulatory barriers:

There are no state or local statutory or regulatory barriers to implementing the requested waiver.

State strategic goals/US Department of Labor priorities supported by waiver request:

NMDWS seeks to address and enhance critical business and workforce needs in the state through an incentivized, industry sector-based approach to workforce training. On-the-job training is a proven, reliable method to instill work-based training in an effective and efficient way that meets the immediate workforce needs of the state, especially in times of recovery from natural or other disasters. Employers need a durable and trained workforce, but when one is not readily available, quick and effective turnaround training is critical for the state's economy.

With the impact of COVID-19, the State of New Mexico is in need of such workforce training activities to provide immediate and effective relief to workforce shortages, especially in the following industry sectors: Healthcare, Aerospace and STEM, Intelligent Manufacturing, Sustainable and Value Added Agriculture, Sustainable and Green Industries, Film and Digital Media, Tourism and Outdoor Recreation, Information Technology and Cybersecurity, Education and International Trade. (Construction) While general academic knowledge is important, learning skills through hands-on training allows for a quick ramp-up of the state's workforce. OJT allows employers to meet their immediate and long-term objectives, while providing jobseekers with learning opportunities in an actual work environment that lead to a career pathway.

For smaller businesses and employers that do not typically have a large workforce on standby, this waiver will allow them opportunities to employ individuals who are dislocated from other employment due to the COVID-19 economic disaster, while still being able to utilize their limited resources for other critical aspects of business.

On-the-job training strategies prioritized by the state match USDOL's priority of work-based learning activities. OJT connects education and training strategies and fulfills the workforce gaps in industry sector-driven demand areas.

NMDWS will provide the following guidance for the increased reimbursement rate, once the waiver is approved:

Reimbursement and Contract Requirements 20 CFR 680.720. Reimbursements under OJT contracts are deemed to be compensation for the extraordinary costs associated with training participants and the cost associated with the lower productivity of the participants. The standard reimbursement rate for OJT contracts is up to 50%. (20 CFR 680.730) An OJT contract reimbursement rate may be up to 75% if a higher rate is justified based on one or more of the following factors:

- I. The characteristics of the participant (e.g. long-term unemployed, little or no work history, physical or mental disability, ex-felon);
- II. the size of the employer (50 or fewer employees);
- III. the quality of employer-provided training and advancement opportunities;
- IV. the training is in an apprenticeable occupation and the employer has agreed to sponsor a registered apprenticeship

When an approved and current USDOL ETA waiver is in effect, an OJT contract reimbursement rate may be up to 90% if the higher rate is justified based on one or more of the above factors.

Projected programmatic outcomes from waiver:

Approval of this waiver request would increase flexibility for smaller businesses to redirect their business resources to critical operational areas, and would increase their labor force, increasing their competitive position for jobs that are typically provided to larger companies and corporations that are able to absorb the cost of a larger workforce. The waiver would also build capacity for small businesses to draw from the local area's workforce talent, versus having to conduct costly and lengthy national recruitment activities. This waiver request's proposed scale for on-the-job training reimbursements is:

- 50 or fewer employees: up to 90 percent on-the-job training employer reimbursement
- 51-250 employees: up to 75 percent on-the-job training employer reimbursement
- > 250 employees: up to 50 percent on-the-job training employer reimbursement

NMDWS anticipates an increase in WIOA OJT participation should this waiver get approved, although a quantifiable amount is not readily apparent. Based on local outreach, there is certainty that employers have been impacted by the COVID 19 economy and are hesitant to hire. NMDWS has observed that the incentive of OJT funding not encourages employers to hire someone with a lower skillset, who they may not have otherwise hired. For instance, an employer planning to higher in June would be able to hire in February with the benefit of additional OJT funds. We have found that employers are more likely to participant in the OJT program when reimbursement rates are 75% or higher, and are more like to provide valuable skills and in most cases retain the individual as an employee.

Individuals, groups or populations impacted by the proposed waiver:

NMDWS intends for this waiver to benefit the large number of jobseekers who have been dislocated by the COVID-19 economic disaster. NMDWS further intends for this waiver to benefit a large number of employers who are in critical need for an immediate workforce to address the significant demands placed on those specific industry sectors as a result of the COVID-19 crisis. Finally, NMDWS intends for this waiver to benefit the state's economic condition, which has been dramatically impacted as a direct result of COVID-19.

Long-term benefit to OJT participants:

NMDWS intends that this waiver will result in long-term benefits and gains to jobseekers by creating gainful and sustainable career pathways, as well as creating a sustainable trained workforce for employers for the long recovery period.

Procedure for monitoring progress of waiver implementation/collection of outcome information:

NMDWS will continue monitoring state and local area performance to assess the effectiveness of this waiver using both state and federal accountability systems to ensure that all negotiated performance measures are met including expenditure percentages, results are accurately reported and will provide necessary technical assistance to the local Boards, one-stop operators and service providers. As part of the monitoring and performance accountability process, NMDWS will collect data on waiver outcomes, which will be included in the WIOA Annual Report. Any waiver renewal requests will include the most recent available outcomes data.

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