

U.S. Department of Labor

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



October 6, 2022

The Honorable Pedro Pierluisi
Governor of Puerto Rico
La Fortaleza
P.O. Box 9020082
San Juan, PR 00902-0082

Dear Governor Pierluisi:

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 23, 2022. This letter provides the Employment and Training Administration's (ETA) official response to your request and memorializes that Puerto Rico will meet the outcomes and implement the measures identified in its plan to ensure accountability agreed to by Puerto Rico 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 to allow flexibility in the use 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 under WIOA Sections 134(a)(2)(B) and 134(a)(3), including disaster-relief employment to affected areas.

ETA Response: ETA approves, through June 30, 2024, a waiver of sec. 194(10) of WIOA, which prohibits WIOA funds from being used for public service employment. This will enable the Commonwealth to use statewide funds for disaster-relief employment, such as described in WIOA Section 170(d). ETA reviewed the Commonwealth's waiver request and plan and has determined that the requirements requested to be waived impede the ability of Puerto Rico to implement its plan to improve the workforce development system. Therefore, ETA approves this waiver under the following conditions:

- The Governor, or any federal agency, declares an emergency in the local area (or areas) where the Commonwealth wishes to use statewide funds for the purpose of public service employment;
- WIOA-funded public service employment opportunities are short-term in nature;
- WIOA-funded public service employment opportunities increase the likelihood of participants entering unsubsidized employment;
- The Commonwealth collects and tracks use of funds under this waiver and complies with all WIOA-required performance and fiscal reporting; and
- The Commonwealth adheres to the requirements relating to wages for disaster relief employment as described in Training and Employment Guidance Letter No.

16-21, *Updated National Dislocated Worker Grant Program Guidance*, section 2.A. The Commonwealth does not need to otherwise follow Dislocated Worker Guidance when using its statewide funds.

The Commonwealth 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,



for
Brent Parton
Acting Assistant Secretary

Enclosure

cc: Jenny Mar Cañón Feliciano, Director, Department of Economic Development and Commerce
Jennifer Friedman, Acting Boston Regional Administrator, ETA
Minnie Holleran, Federal Project Officer, ETA

Puerto Rico Waiver Request

Waiver to allow flexibility in the use of funds reserved by the Governor to provide statewide rapid response activities to instead provide statewide employment and training activities, including disaster relief employment to affected areas

Waiver of WIOA Section 134(a) Statewide Employment and Training Activities.

1. Statutory and/or regulatory requirements to be waived:

The Commonwealth of Puerto Rico, through the Department of Economic Development and Commerce (DEDC), the WIOA Title I-B grantee, seeks a waiver allowance to allow flexibility in the use 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 under WIOA Section 134(a)(2)(B) and WIOA Section 134(a)(3), including disaster-relief employment to affected areas. Specifically, the Commonwealth is requesting to waive the prohibition of wages to employ participants in disaster relief employment immediately.

Under this waiver allowance, permitted WIOA statewide fund use includes, but is not limited to:

- Expeditious allocation of funds to a local workforce development board, or local board, so they may respond quickly to a disaster, emergency, or other qualifying event as described at 20 CFR 687. On September 21, 2022, President Joe Biden issued a major disaster declaration for Puerto Rico, to provide federal assistance to address the unprecedented flooding that has occurred because of Hurricane Fiona. It is important to note that over the course of five years, the island has experienced two destructive hurricanes (Irma and Maria), two destructive earthquakes, and a world-wide health pandemic (COVID), in addition to the current disaster caused by Hurricane Fiona.
- Alleviation of the effects that a qualifying event causes within affected local area(s), and/or planning regions. WIOA statewide funds will allow comprehensive disaster relief employment and employment and training activities, and the provision of needed humanitarian resources and services, including other services or resources deemed necessary as described at 20 CFR 687.180(b)(1). In the past, Puerto Rico has demonstrated that WIOA-funded public service employment opportunities increase the likelihood of participants entering unsubsidized employment.

Although public service employment is generally prohibited for WIOA participants, temporary disaster relief employment is an allowable exception. Disaster relief employment opportunities will enhance and augment the Commonwealth's ability to assist those individuals and businesses impacted by Hurricane Fiona as well as help the Commonwealth's economy make the adjustments, adaptations, and reconfigurations necessary to continue operations under conditions brought about by Hurricane Fiona and the ongoing COVID-19 pandemic. Disaster relief employment opportunities will also provide income maintenance to participants and needed services to the community with a focus on moving the participants into permanent, unsubsidized jobs. For the purposes of this waiver, temporary disaster relief employment may include, but not be limited to work in fields of clean-up, human betterment and community improvement, housing and neighborhood improvement, and rural development.

- An individual's disaster relief employment is limited to 12 months or 2080 hours for work related to recovery from a single emergency or disaster. The Workforce Development

Program (WDP) of the DEDC may extend an individual's disaster relief employment for up to an additional 12 months or 2080 hours if requested and sufficiently justified by the local board.

- Supportive services may be provided to enable individuals to participate in disaster relief employment, and employment and training activities, including such costs as transportation, childcare, and personal safety equipment and clothing consistent with local policies.
- Individuals shall be eligible to be offered disaster relief employment and employment and training services if such individual is a dislocated worker; is a long-term unemployed individual as defined by the State; is temporarily or permanently laid off as a consequence of the emergency or disaster; or in the case of an individual who is self-employed, becomes unemployed or significantly underemployed as a result of the emergency or disaster as well as appropriate adults and youth ages 18 and over.

2. Actions undertaken to remove state or local barriers:

The Commonwealth of Puerto Rico established the Puerto Rico Bureau for Emergency Management and Disaster Administration —In Spanish: *Negociado para el Manejo de Emergencias y Administración de Desastres* (NMEAD)— as the agency that oversees all emergency activities that occur in Puerto Rico. Within all local workforce development areas, or local areas, there are responsible entities organized by local government, or its agents, should a qualifying event occur. The NMEAD works in concert with these entities to provide resources and expertise.

The Government of Puerto Rico, through the Central Recovery and Reconstruction Office (CRRO), also established the Central Office of Recovery, Reconstruction, and Resilience (COR3), whose purpose is to develop a recovery plan in response to the “Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018” (Public Law No. 115-123). COR3 plans to use third-party assistance to manage recovery funds and optimize the long-term reconstruction process, in a transparent manner.

Governor Pierluisi also increased the minimum wage to \$8.50 per hour effective January 1, 2022, and to \$9.50 per hour on July 1, 2023, for all employees covered by the Fair Labor Standards Act.

Effective January 2022, the Federal Emergency Management Agency (FEMA) has obligated to the Government of Puerto Rico total more than 9,100 projects, nearly 80 percent are for permanent work. The Commonwealth can leverage short-term disaster recover work with FEMA-related projects for long-term employment opportunities for participants.

Although Puerto Rico has been awarded and benefitted from National Dislocated Worker Grants (NDWG) in the past, the immediate use of existing WIOA funds is the preferred option. Although the Commonwealth will consider an Emergency NDWG as a viable option.

3. Goals and expected programmatic outcomes of waiver

Strategic Goals

One of the goals articulated in the Puerto Rico State Plan Modification for 2022-2024, is “*Facilitating a framework for planning, developing, and governing a locally job-driven system by employers and job seekers.*”

To that end, in response to Hurricane Fiona, the Commonwealth seeks to use WIOA statewide funds in a manner that rapidly responds to the evolving workforce demands of employers and the state overall, while providing employment and training opportunities to individuals impacted by the disaster. The use of WIOA statewide funds under this waiver would offer greater flexibility so that the Commonwealth and local partners can expand our collective ability to coordinate resources, services and activities for individual, workers and employers affected by the pandemic. The state will use WIOA statewide funds to ensure that critical, time-sensitive work can be performed, that the necessary adjustments and transitions required to effectively respond to Hurricane Fiona can be made, and the potential participant pool to complete this work is widened. The waiver flexibility permits local areas the latitude to marshal available labor, conduct appropriate training, enable resources to be requisitioned quickly, and provide immediate and comprehensive disaster recovery assistance.

The Commonwealth estimates that the waiver will improve outcomes in the following ways:

- Increase statewide and local area workforce development response times to a qualifying event;
- Enhance the ability to the state, employers, and industry to make the necessary adjustments, transitions, and adaptations necessary to continue to function and thrive in a post-Covid-19 environment;
- Increase public safety and help support humanitarian activities;
- Availability of disaster relief employment will provide grant participants with access to employment and training activities;
- Increasing of eligible grant participant's employment and training activities will lead towards a higher probability of securing unsubsidized employment at a future date
- Alleviation of some of the time-sensitive variables arising from a qualifying event affecting an employer and lessening the severity of possible layoffs or business closings; and
- Expeditious and responsible use of available WIOA funding.

4. Projected programmatic outcomes resulting from implementation of the waiver:

Expanding the ability for the Commonwealth to provide disaster related employment opportunities through statewide funding will allow participants to develop skills that will better prepare them to obtain permanent employment in the future, which is consistent with the shared goals of the US Department of Labor and the Commonwealth to improve job and career results for participants. The waiver is also consistent with the USDOL's goals for employer engagement, by allowing the Commonwealth to quickly assist employers and industries in addressing and overcoming the challenges brought about by Hurricane Fiona.

Department of Labor's policy priorities:

This waiver aligns with not only the Department of Labor's priorities, but also with those of the Commonwealth of Puerto Rico. The first goal outlined in the State Plan is to, "*Develop and efficient partnership with employers, the educational system, workforce development partners, and community-based organizations to deliver a platform that will prepare a skilled workforce for existing and new employers.*"

By establishing short-term disaster relief employment in communities, local areas can respond to employer needs, expand the skill level of participants, and create a more self-sufficient community. Expanding the ability for the state to provide disaster related employment opportunities through

statewide funding allows participants to develop skills that will better prepare them to obtain permanent employment.

5. Quantifiable projected programmatic outcomes resulting from implementation of the waiver

After Hurricanes Irma and María in 2017 approximately 2,200 dislocated workers participated in temporary disaster relief employment. During the COVID-19 Pandemic, 1,518 dislocated workers participated in temporary disaster relief/humanitarian employment, which included cleaning and disinfection of public common areas, and supported the delivery of supplies and other humanitarian aid.

To address the current Hurricane Fiona, disaster The Commonwealth is expecting to serve at least 500 participants, which includes both Out-of-School Youth and Dislocated Workers.

6. Individuals impacted by the waiver

This waiver will support business, industry, community-based organization, and service providers, by helping restart local business operations, providing employment to community residents, and provide older youth, adults, and dislocated workers with employment skills.

Other impacted individuals include:

- All eligible participants as identified at WIOA section 170 and 20 CFR 687.170;
- Eligible WIOA Title I Adult, Dislocated Workers, and Out-of-School Youth participants.
- WIOA reportable individuals claiming under-employment or unemployment; to maintain benefit of this waiver a reportable individual must be deemed a WIOA Title I eligible participant within thirty days of accepting disaster relief employment and/or training activities.
- Non-WIOA eligible recipients include affected businesses and employers, residents and other individuals that benefit from the qualifying event clean-up, restoration and humanitarian activities, and resources provided.

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

To monitor progress in implementation, the Workforce Development Program (WDP) leadership will determine if the qualifying event requires the use of WIOA statewide funds and will approve parameters for the project and be the operational lead. Applicable federal, state, and local laws, regulations, policies and procedures will be used to ensure fiscal accountability. Unless otherwise authorized in this waiver, the financial and administrative rules contained in Workforce Innovation and Opportunity Act; Final Rule (i.e., 20 CFR 683) will apply.

At a minimum, the funding recipient will supply the WDP with the following information for review:

- Completed Request for Funds form with local board signatory authorizing request; Official declaration documenting the emergency and/or disaster event;
- Narrative will include, at a minimum, summary of the event, preliminary assessment of the cleanup, humanitarian needs of the affected areas, and will demonstrate whether there is a sufficient population of eligible individuals to conduct the planned work;
- Budget and budget justification; and

- Completed worksite summary.

Annual WIOA programmatic reviews will include an evaluation of how this and all waivers are impacting local programs and performance. Applicable federal, state and local laws, regulations, policies and procedures will be used to ensure fiscal accountability. The Department of Economic Development and Commerce's (DEDCC) Workforce Development Program (WDP) unit will review monthly project status reports and will conduct meetings (via teleconference) with project stakeholders as necessary to monitor projects and expenditures. At a minimum, local areas funded will provide the WDP with the following information for review:

- Statements of Work
- Revised narrative and associated attachments when a modification is required;
- Monthly Financial Status Reports;
- Monthly project status report of project activities; and
- Data entry for all participant service in the PIRL system.

Only local boards will be the recipient of WIOA statewide funding for qualifying events. If a qualifying event occurs in a local area, the state requires the respective local board to collaborate with local governments and other recognized entities to determine whether workforce development-oriented services and activities are warranted. Local boards may work with their respective local area fiscal agents to complete and submit the funding request to WDP. Local boards will work with one-stop operator(s) to communicate the funding parameters to workforce development system partners and other service providers. Participant activity is to be recorded in the state system of record. All funds obligated will be accounted for in the financial management system, the MIP.

State staff who administer programming will provide ongoing technical assistance and oversight as it relates to the appropriateness and the effectiveness of this waiver.

Additionally, the WDP 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.

8. Assurance of state posting of the request for public comment (including the dates that the state made the draft request available for public comment) and notification to affected local workforce development boards

N/A. The initial waiver was posted for public comment. This application is in response to additional information required by ETA.