



SEP 20 2018

The Honorable Greg Abbott  
Governor of Texas  
Post Office Box 12428  
Austin, Texas 78711

Dear Governor Abbott:

Thank you for your waiver requests of certain statutory and regulatory provisions of the Workforce Innovation and Opportunity Act (WIOA) and the accompanying plan to improve the statewide workforce development system, submitted on June 26, 2018 (copy enclosed). This letter provides the Employment and Training Administration's (ETA) official response to the State's request and memorializes that Texas will meet the outcomes and implement the measures identified in its plan to ensure accountability agreed to by Texas 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 of the obligation of eligible training providers (ETPs) to collect performance data on all students in a training program at WIOA Sections 116(d)(4)(A) and 122, and 20 CFR 677.230(a)(4) and (5) and 20 CFR 680.

The State's request to waive the obligation of ETPs to collect and report performance data on all students in a training program is approved. ETA reviewed the State's waiver request and plan and has determined that the requirements requested to be waived impede the ability of Texas to implement its plan to improve the workforce development system. Therefore, ETA approves this waiver for Program Years (PYs) 2018 and 2019 (July 1, 2018, through June 30, 2020). The State must provide information regarding how the Governor will take into account the outcomes of all students in an ETP program of study, with respect to their employment and earnings, as required for the demonstration of continued eligibility in 20 CFR 680.460(f)(1)(iii) and WIOA Section 122. The State will continue to collect and report data for all WIOA-funded participants in accordance with all statutory and regulatory requirements, including WIOA Sections 116 and 122, and as specified at 20 CFR 677.230 and 680.460. While ETA recognizes the importance of informing consumer choice through the provision of quality data on training outcomes, we also recognize that the systems and willingness to collect the required performance data from providers may discourage training provider participation, which is a critical component of the workforce development system.

Requested Waivers: Waivers associated with the requirement at WIOA Section 129(a)(4)(A) and 20 CFR 681.410 that the States and each local area expend 75 percent of all Governor’s reserve and local formula youth funds on out-of-school youth (OSY).

The State’s request to waive the requirement that states and local areas expend 75 percent of all Governor’s reserve and local formula youth funds on OSY is approved. In addition, ETA approves calculation of the OSY expenditure target at the state-level rather than by each local area. ETA reviewed the State’s waiver request and plan and has determined that the requirements requested to be waived impede the ability of Texas to implement its plan to improve the workforce development system. Therefore, ETA approves the requested waivers for PYs 2018 and 2019 (July 1, 2018, through June 30, 2020). Texas may lower the target rate for expenditure of Governor’s reserve and local youth funds on out-of-school youth to 50 percent and calculate a 50 percent state-level OSY expenditure target.

Requested Waiver: Waiver of 20 CFR 681.550 to allow WIOA Individual Training Accounts (ITAs) for in-school youth.

The State’s request to waive the requirement limiting ITAs to only out-of-school youth ages 18 – 24 is approved. ETA reviewed the State’s waiver request and plan and has determined that the requirements requested to be waived impede the ability of Texas to implement its plan to improve the workforce development system. Therefore, ETA approves this waiver for PYs 2018 and 2019 (July 1, 2018 – June 30, 2020).

Requested Waiver: Reallocation provisions at WIOA Sections 128(c)(3) and 133(c)(3) to allow the State Workforce Development Board to develop additional criteria for the reallocation of recaptured funds.

The State’s request to waive the reallocation provisions at WIOA Sections 128(c)(3) and 133(c)(3) is approved. The State may reallocate recaptured funds according to State-developed criteria. Under this waiver, the State has the discretion to consider additional factors described in its waiver plan in determining local area eligibility for reallocation of recaptured funds. As such, the State may only consider:

- The amount available for redistribution;
- Amount requested by the Local Workforce Development Board;
- Demonstrated need for and ability to use additional funds to serve low-income individuals, public assistance recipients, dislocated workers, and unemployment insurance claimants;
- A demonstrated capacity to effectively expend funds to address the need for services in the workforce development area;
- A Local Workforce Development Board’s established plan for working with at least one of the Governor’s industry clusters as specified in the Local Workforce Development Board’s plan; and
- The Local Workforce Development Area’s performance during the current and prior performance years.

The State must make public its reallocation procedure and policy, as well as any future changes to the policy. Please note that the approved waiver only applies to reallocation and not recapture.

Requested Waiver: Waiver of the performance requirements at WIOA Section 116(c) to allow the State to modify the performance measures used to negotiate Local Workforce Development Board performance.

The State is requesting to modify the performance measures the State uses to negotiate local program performance. ETA approves the State's request for PYs 2018 and 2019 (July 1, 2018 – June 30, 2020) in accordance with the special rules regarding designated areas and sanctions at WIOA Section 189(i)(1)-(2). The State must continue to track and report WIOA primary indicators of performance at both the State and local levels.

Requested Waiver: Waiver of WIOA Section 121(b)(1)(A)(ii) and 20 CFR §678.700 to limit mandatory infrastructure payments to only those required partners that are co-located at a one-stop center.

Unfortunately, WIOA Section 189(i)(3)(A)(i) prohibits the Department from waiving any provisions related to funding of infrastructure costs for one-stop centers. However, the State has significant flexibility regarding infrastructure funding agreements under current law.

WIOA Section 121(b)(1)(A)(ii) states that required partners must “use a portion of the funds available for the program and activities to maintain the one-stop delivery system, including payment of the infrastructure costs of one-stop centers in accordance with subsection (h).” The statute also provides options to the required partners for making infrastructure contributions to the American Job Centers. WIOA Section 121(c)(2)(A)(ii)(I) states that “funding through cash and in-kind contributions (fairly evaluated), which contributions may include funding from philanthropic organizations or other private entities, or through other alternative financing options, to provide a stable and equitable funding stream for ongoing one-stop delivery system operations.” ETA will work with the State to develop infrastructure agreements that are both fair and feasible to all one-stop partners.

Requested Waiver: Waiver of WIOA Section 222(a)(1), which requires each eligible agency to award multiyear grants or contracts, on a competitive basis, to eligible training providers within the state for adult education and literacy (AEL) services.

The State is seeking a waiver to grant the state flexibility to either award AEL grants directly to AEL providers or to allocate funds to Local Workforce Development Boards (Boards) to conduct a local competitive procurement for the delivery of AEL services. Unfortunately, the Secretary's waiver authority extends only to WIOA Title I, subtitles A, B, and E. The State is requesting a waiver of a WIOA Title II program under the purview of the Department of Education. While the Department of Labor cannot approve this waiver, ETA has shared this issue with our colleagues at the Department of Education.

ETA is available for further discussion and to provide technical assistance to the State to support achieving its goals. The Department of Labor has proposed additional flexibility in its Budgets to give governors more decision-making authority to meet the workforce needs of their states. Should Congress pass legislation signed by the President with new legal authority, we will be happy to revisit the areas that cannot currently be waived. If you have questions or wish to explore additional flexibility, feel free to contact my office at 202-693-2772.

Sincerely,



Rosemary Lahasky  
Acting Assistant Secretary

Enclosure

cc:

Larry E. Temple, Executive Director, Texas Workforce Commission

Nick Lalpui, Dallas Regional Administrator, Employment and Training Administration

Karrie Gericke, Federal Project Officer, Employment and Training Administration

# Texas

## WAIVER REQUEST 1

### Out-of-School Youth Expenditure Requirement

#### Statutory and regulatory provisions to be waived

The Texas Workforce Commission (TWC) 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 (workforce areas) spend not less than 75 percent of youth funds to provide services to out-of-school youth (OSY).

On October 11, 2017, the US Department of Labor Employment and Training Administration (DOLETA) granted TWC a waiver reducing the OSY expenditure requirement from 75 percent to 50 percent of youth funds for workforce areas directly impacted by Hurricane Harvey, thus allowing those workforce areas flexibility to meet the increased needs of in-school youth (ISY) affected by the disaster. That waiver is effective through September 30, 2018, corresponding with the approval period of the state's Hurricane Harvey National Dislocated Worker Grant.

This request is for a waiver to allow the state and all workforce areas in Texas the flexibility to direct up to 50 percent of youth funds to deliver workforce and educational services to ISY, while continuing to serve OSY as a priority population. Additionally, TWC is seeking flexibility to calculate OSY expenditures on a collective statewide basis, for all WIOA funds directed toward youth service delivery, instead of siloed calculations associated with formula funding allocated to Local Workforce Development Boards (Boards) and the Governor's reserve funding. This strategy will allow Boards, and the state as a whole, to more effectively serve youth in need of workforce and educational services.

#### Actions taken to remove state or local statutory or regulatory barriers

There are no state or local statutory or regulatory barriers to implementing the requested waiver. TWC regulations and policy statements are in compliance with current federal law.

#### Waiver goals and expected outcomes

While provision of services to OSY is vital, the requirement to expend 75 percent of youth statewide and formula funds on OSY prohibits states and workforce areas from using discretion when serving youth based on state and local demographics, resources, economies, employment outlooks, and other labor market factors. The requirement also 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 state and local ability to carry out such initiatives that provide necessary educational and training experiences for students and that meet employer's workforce education and skills needs.

Employer engagement is an essential component of successful youth outcomes. One way that Texas is working to increase employer engagement is by actively encouraging employers to offer students paid internships through the Texas Internship Challenge—a partnership between TWC, Texas Education Agency, and The Higher Education Coordinating Board. This initiative challenges employers to offer paid internships and make it easy for students to search and apply for them. Several employers in high-demand industries have already committed to and are

actively involved in this initiative. TWC will continue to encourage more employers to make internships available to students.

Consistent with WIOA's increased emphasis on credential attainment, this flexibility would allow the state and Local Workforce Development Boards (Boards) to provide work-based learning opportunities, such as work experience, for ISY as specified at WIOA §129(c)(2)(C) and 20 CFR §681.600. Providing more work-based learning opportunities to ISY would allow Texas to continue strengthening its commitment to developing activities that enhance the choices available to eligible youth and encourage them to complete secondary education, enroll in postsecondary education and advanced training, progress through a career pathway, and enter into unsubsidized employment that leads to economic self-sufficiency in accordance with WIOA §129(b)(2).

Boards throughout the state host youth career exploration and job fairs to help students identify local resources and connect them to employment opportunities in their area. The 75 percent OSY expenditure requirement restricts Boards' ability to direct adequate resources to these and similar crucial youth outreach activities, which ultimately limits local opportunities to reach ISY.

Additionally, Texas is the nation's second most populous state. It is also the second largest geographically. As such, much of the state is rural. According to the US Census Bureau report, "Life Off the Highway: A Snapshot of Rural America," 15 percent of Texans live in rural areas compared to 4.9 percent of Californians. California's population exceeds Texas' by more than 10 million people, yet more than twice as many Texans (4.2 million) than Californians (1.9 million) live in rural areas. Boards in rural communities have expressed the challenges they face in identifying and serving OSY in those areas. Further, given the economic and employment challenges experienced by many rural communities, ISY residing in rural communities are in need of the assistance offered by the Texas workforce system and would benefit from job fairs, hiring events, paid and unpaid work experiences, and other services and activities in their workforce areas.

Reducing the OSY expenditure requirement to 50 percent and permitting flexibility to calculate OSY expenditures on a collective statewide basis, instead of per workforce area, would allow TWC and Boards 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 the preparation of young people for in-demand careers in the workforce, regardless of a youth's school status. Under this waiver, Boards would continue to serve OSY as a priority population and track OSY services, expenditures, and performance metrics.

**Goals:**

- **Serve youth regardless of school status**

Allowing Boards flexibility to increase spending on providing education and training to ISY would not only increase the workforce opportunities available to all youth, but also help prevent at-risk ISY from dropping out of school or not pursuing additional education and training that would lead to meaningful work and economic self-sufficiency.

- **Serve ISY in rural communities**

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

- **Serve youth according to local and statewide need**

Provide local and state-level flexibility to serve OSY and ISY in a way that best meets each workforce area's needs according to population, resources, economy, employment outlook, and other labor market factors.

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

TWC and Boards will continue to give priority of service to OSY and achieve any OSY expenditure target authorized by DOLETA through this waiver request.

**Programmatic Outcomes:**

The approval of this waiver would permit Boards the opportunity to determine how best to meet the educational and training needs of youth, regardless of school status, and specific to the population, geographical location, and economic and employment conditions of each workforce area. Increasing outreach to ISY while maintaining a focus on serving OSY will help develop a larger pool of young people qualified and prepared to meet the current and future needs of employers in their workforce areas and throughout the state.

**Department of Labor's policy priorities**

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

- focuses on ensuring that eligible youth achieve secondary and postsecondary educational success;
- increases youths' access to and opportunities for the education, training, employment, and support services that they need;
- aligns 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.

**Individuals impacted by the waiver**

This waiver is intended to benefit at-risk ISY statewide who face barriers to education, training, and employment. OSY will also benefit, because they will continue to be served as a priority population in accordance with WIOA. Boards will benefit from increased flexibility to develop unique solutions to better serve youth according to local conditions and needs.

**Process for monitoring waiver implementation progress**

TWC has a monitoring and performance accountability system that measures results for employers and other customers who use the Texas workforce system. TWC continuously analyzes performance reports and compares actual performance with contracted targets. TWC will continue to adjust monitoring of performance requirements to ensure that the state meets its performance goals and objectives. TWC will monitor progress under this waiver by reviewing monthly expenditure and performance reports submitted by the Boards, through regularly

scheduled conference calls with Board executive directors, and through its monitoring and performance accountability system.

### **Notice to affected Boards**

TWC notified all Boards that the agency is seeking this waiver request and sought their input before submitting this request to DOLETA.

### **Public comment**

To ensure meaningful public comment, including comments from business and organized labor, TWC will include this waiver request as part of the agency's WIOA plan modification when the plan modification is presented for public comment.

### **Waiver impact**

TWC will collect information about this waiver through its monitoring and performance accountability system and report waiver outcomes in the state's WIOA Annual Report. If the state requests renewal of this waiver, then TWC will provide the most recent outcomes data available.

## **WAIVER REQUEST 2**

### **Youth Individual Training Accounts**

#### **Statutory and regulatory requirements to be waived**

The Workforce Innovation and Opportunity Act (WIOA) rule at 20 CFR §681.550 limits the use of individual training accounts (ITAs) for youth participants to out-of-school youth (OSY) ages 16 to 24. The Texas Workforce Commission (TWC) is seeking a waiver of this rule to extend the use of ITAs to in-school youth (ISY).

On October 11, 2017, the US Department of Labor Employment and Training Administration (DOLETA) granted TWC a waiver allowing local workforce development areas (workforce areas) impacted by Hurricane Harvey and those serving youth from disaster areas to provide affected ISY with ITAs to meet the individual training and employment needs of all youth participants affected by or dislocated by Hurricane Harvey. That waiver is effective through September 30, 2018, corresponding with the approval period of the state's Hurricane Harvey National Dislocated Worker Grant.

This request is for a statewide waiver to grant ISY the same participant choice options that OSY have by allowing workforce area staff to use ITAs when appropriate to provide education and training to ISY.

#### **Actions taken to remove state or local statutory or regulatory barriers**

There are no state or local statutory or regulatory barriers to implementing the requested waiver. TWC regulations and policy statements are in compliance with current federal law.

#### **Goals and expected outcomes of waiver**

Once a youth enrolls in a WIOA program as an ISY, that youth maintains ISY status until exiting the program. Excluding ISY from receiving ITAs undermines WIOA's goals to expand program options, increase program flexibility, and enhance customer choice. DOL states in the preamble

to the WIOA Final Rule that ISY age 18 or older may access ITAs through the adult program. This is problematic in that it excludes ISY from entering ITA-funded educational and training programs that may be critical to ISY who drop out or are at risk of dropping out of school. Youth caught in this gap are susceptible to leaving the workforce program and not achieving the education, training, and certifications that develop the skills employers require and that lead to economic self-sufficiency.

This waiver would permit Local Workforce Development Boards (Boards) to provide certain ISY with ITAs. Such flexibility would allow workforce area staff the necessary flexibility to use Youth formula funds when appropriate to meet the individual training and employment needs of certain at-risk ISY participants. Boards would be required to track performance for ISYs using ITAs.

**Goals:**

- **Increase in-school youths' access to educational and training programs**

Allowing Boards flexibility to use ITAs to provide education and training for ISY would increase the workforce opportunities available to youth and help at-risk ISY to pursue education and training that would lead to meaningful work and economic self-sufficiency.

**Programmatic Outcomes:**

Disrupting a youth participant's access to education and training services increases the probability that the youth will not complete the program. The approval of this waiver would allow Boards to provide seamless service continuity to ISY who drop out of school or are at risk of dropping out of school. Through this waiver, ISY who drop out of school would not need to exit the youth program and then wait 90 days to re-enroll as an OSY.

**Department of Labor's policy priorities**

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

- increases youths' access to and opportunities for the education, training, employment, and support services that they need;
- ensures that at-risk ISY do not fall into a regulatory gap that could prevent them from receiving the education and training necessary to securing meaningful work and economic self-sufficiency; and
- supports WIOA's goals to expand program options, increase program flexibility, and enhance customer choice.

**Individuals impacted by the waiver**

This waiver would benefit ISY who drop out of school or are at risk of dropping out of school.

**Process for monitoring waiver implementation progress**

TWC has a monitoring and performance accountability system that measures results for employers and other customers who use the Texas workforce system. TWC continuously analyzes performance reports and compares actual performance with contracted targets. TWC will continue to adjust monitoring of performance requirements to ensure that the state meets its

performance goals and objectives. TWC will monitor progress under this waiver by reviewing monthly expenditure and performance reports submitted by the Boards, through regularly scheduled conference calls with Board executive directors, and through its monitoring and performance accountability system.

**Notice to affected Boards**

TWC notified all Boards that the agency is seeking this waiver request and sought their input prior to submitting this request to DOLETA.

**Public comment**

To ensure meaningful public comment, including comments from business and organized labor, TWC will include this waiver request as part of the agency’s WIOA plan modification when the plan modification is presented for public comment.

**Waiver impact**

TWC will collect information about this waiver through its monitoring and performance accountability system and report waiver outcomes in the state’s WIOA Annual Report. If the state requests renewal of this waiver, then TWC will provide the most recent outcomes data available.

**WAIVER REQUEST 3**

**Adult Education and Literacy Provider Procurement**

**Statutory and regulatory requirements to be waived**

Workforce Innovation and Opportunity Act (WIOA) §231(a), pursuant to §222(a)(1), requires each eligible agency to award multiyear grants or contracts, on a competitive basis, to eligible training providers within the state for adult education and literacy (AEL) services. The Texas Workforce Commission (TWC) is seeking a waiver to grant the state flexibility to either award AEL grants directly to AEL providers or to allocate funds to Local Workforce Development Boards (Boards) to conduct a local competitive procurement for the delivery of AEL services.

**Actions taken to remove state or local statutory or regulatory barriers**

There are no state or local statutory or regulatory barriers to implementing the requested waiver. TWC regulations and policy statements are in compliance with current federal law.

Full integration of AEL activities within each local workforce development area (workforce area) would be more effectively advanced by allowing the eligible agency (TWC) to distribute AEL formula funding to Boards and enable the Boards to competitively procure AEL services and activities appropriate for their workforce areas.

**Goals:**

- **Full integration of AEL activities within each workforce area**

Boards procure providers for employment and training services and activities. Local procurement of AEL providers would further integrate AEL activities into the workforce system.

- **Promote local flexibility**

Boards are the experts on their local labor markets. Allowing them the option to competitively procure AEL services and activities would increase their ability to make decisions that are best for their workforce areas.

**Programmatic Outcomes:**

The approval of this waiver would offer Boards options to procure AEL providers in a way that best meets each workforce area's needs according to population, resources, economy, employment outlook, and other labor market factors.

**Department of Labor's policy priorities**

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

- connects education and training strategies by allowing local control of the AEL provider procurement process;
- improves job and career results by allowing Boards to engage in the provider approval process; and
- promotes full integration of AEL activities within workforce areas.

**Individuals impacted by the waiver**

This waiver is intended to allow each Board the choice to conduct local competitive procurement for the delivery of AEL services or to let TWC continue to manage that process.

**Process for monitoring waiver implementation progress**

TWC has a monitoring and performance accountability system that measures results for employers and other customers who use the Texas workforce system. TWC continuously analyzes performance reports and compares actual performance with contracted targets. TWC will continue to adjust monitoring of performance requirements to ensure that the state meets its performance goals and objectives. TWC will monitor progress under this waiver by reviewing monthly expenditure and performance reports submitted by the Boards, through regularly scheduled conference calls with Board executive directors, and through its monitoring and performance accountability system.

**Notice to affected Boards**

TWC notified all Boards that the agency is seeking this waiver request and sought their input prior to submitting this request to the US Department of Labor Employment and Training Administration.

**Public comment**

To ensure meaningful public comment, including comments from business and organized labor, TWC will include this waiver request as part of the agency's WIOA plan modification when the plan modification is presented for public comment.

**Waiver impact**

TWC will collect information about this waiver through its monitoring and performance accountability system and report waiver outcomes in the state's WIOA Annual Report. If the state requests renewal of this waiver, then TWC will provide the most recent outcomes data available.

## **WAIVER REQUEST 4**

### **Local Performance Accountability Flexibility**

#### **Statutory and regulatory requirements to be waived**

The Texas Workforce Commission (TWC) is seeking a limited waiver from Workforce Innovation and Opportunity Act (WIOA) §116(c) pertaining to local performance accountability measures for Subtitle B.

#### **Actions taken to remove state or local statutory or regulatory barriers**

There are no state or local statutory or regulatory barriers to implementing the requested waiver. TWC regulations and policy statements are in compliance with current federal law.

#### **Goals and expected outcomes of waiver**

TWC requests a waiver from WIOA §116(c) to allow greater flexibility when contracting performance measures with the Local Workforce Development Boards (Boards) to allow TWC to promote further integration of services within Workforce Solutions Offices.

Specifically, TWC is requesting the flexibility to modify Board performance measures. Under this proposed waiver, TWC will continue to track and report the core indicators of performance at both state and Board levels as required by WIOA §116; however, the waiver will give TWC the flexibility to select among the statutory Title I measures and develop other measures to use in its Board contracts. TWC is interested in developing Board-contracted measures that support integration and that may be leading indicators for the statutorily prescribed measures to make them more useful to the Boards.

Prior to WIOA, under the Workforce Investment Act (WIA), TWC had a similar waiver that provided this flexibility in selecting and developing local performance accountability measures. This waiver was in place for more than 10 years and allowed TWC to use a set of more integrated outcome measures that were aligned with the old WIA common measures but that were applicable to all participants, regardless of program. Through the Local Accountability Flexibility Waiver, TWC improved program integration and streamlined the agency's performance accountability model.

However, WIOA implementation resulted in the loss of that historic waiver and reintroduced a focus on "siloes" program outcomes rather than purely customer-focused considerations into the Texas workforce system. WIOA's requirement to contract separate indicators of performance by program to the Boards unnecessarily siloes service delivery and may rebuild a barrier to integration that TWC was able to mostly remove under the prior waiver.

While this proposed waiver would provide TWC flexibility in selecting Board performance measures, WIOA §116(g) will continue to provide sanctions for a Board's failure to meet any of the WIOA performance measures. Although the approval of this waiver would provide TWC with additional flexibility in determining which measures to formally contract to the Boards,

accountability will not be impacted, as TWC would still apply the sanction provisions of WIOA §116(g) to those measures that are formally contracted.

**Goals:**

- **Increase integration of services to customers**

Boards are responsible for implementing many federal and state workforce development programs, allowing them the opportunity to integrate service delivery; however, programs are partially driven by how performance is measured. Programs with different measures of success require different means of management. Rather than focusing on employers' needs and finding job seekers to fill those needs, staff must focus on the specific outcome expectations of the program that funds the services that the customer receives.

- **Better alignment in performance accountability at the state, local, and service provider levels**

Because Boards are responsible for numerous workforce development programs, coenrollment of customers in multiple programs is becoming increasingly commonplace. Therefore, TWC believes that the most effective way to evaluate Boards and to promote accountability is to use integrated performance measures.

- **Greater flexibility to Boards in designing and implementing one-stop services**

By eliminating program-specific measures and applying integrated performance measures across all programs, TWC will promote service-delivery designs that are based on the needs of its customers, including employers, rather than siloed program requirements.

**Programmatic Outcomes:**

The approval of this waiver would result in the continued administrative relief that would remove barriers to coenrollment and promote more integrated case management across multiple programs, as WIOA envisions. TWC strongly supports the concept that programs with similar outcome objectives should be measured in a similar fashion.

TWC has developed a set of systemwide performance measures for the Texas legislature and the governor to evaluate the Texas workforce system. Texas' new measures will be system measures applied across all programs. For example, there will be a systemwide measure based on an unduplicated list of exiters from all workforce programs (using the federal "soft exit" methodology). These measures will make no distinction between customers served by Employment Service; WIOA Adult, Dislocated Worker, and Youth; Temporary Assistance for Needy Families; Supplemental Nutrition Assistance Program; other various state-level programs; or a combination of programs.

Approval of this waiver would continue to allow the streamlining of administrative processes, resulting in maximized resources focused on employment outcomes.

**Department of Labor's policy priorities**

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

- supports employer engagement by promoting service-delivery designs that are based on employer needs;
- improves job and career results by identifying employers' needs and connecting employers with job seekers to meet those needs;
- promotes more integrated case management across multiple programs, as WIOA envisions; and
- maintains and enhances state and local performance accountability.

### **Individuals impacted by the waiver**

Employers, job seekers, incumbent workers, and workforce area staff may benefit from the waiver. The removal of siloed performance measures and the implementation of more integrated measures will allow staff to focus on the needs of employers, find job seekers to match those needs, and maximize integrated services to achieve the best outcomes.

### **Process for monitoring waiver implementation progress**

TWC has a monitoring and performance accountability system that measures results for employers and other customers who use the Texas workforce system. TWC continuously analyzes performance reports and compares actual performance with contracted targets. TWC will continue to adjust monitoring of performance requirements to ensure that the state meets its performance goals and objectives. TWC will monitor progress under this waiver by reviewing monthly expenditure and performance reports submitted by the Boards, through regularly scheduled conference calls with Board executive directors, and through its monitoring and performance accountability system.

### **Notice to affected Boards**

TWC notified all Boards that the agency is seeking this waiver request and sought their input prior to submitting this request to the US Department of Labor Employment and Training Administration.

### **Public comment**

To ensure meaningful public comment, including comments from business and organized labor, TWC will include this waiver request as part of the agency's WIOA plan modification when the plan modification is presented for public comment.

### **Waiver impact**

TWC will collect information about this waiver and report waiver outcomes in the state's WIOA Annual Report. If the state requests renewal of this waiver, then TWC will provide the most recent outcomes information available.

## **WAIVER REQUEST 5**

### **Infrastructure Funding Contributions**

#### **Statutory and regulatory requirements to be waived**

The Texas Workforce Commission (TWC) is seeking a waiver of Workforce Innovation and Opportunity Act (WIOA) §121(b)(1)(A)(ii) and 20 CFR §678.700 to limit mandatory infrastructure payments to only those required partners that are colocated at a one-stop center.

### **Actions taken to remove state or local statutory or regulatory barriers**

There are no state or local statutory or regulatory barriers to implementing the requested waiver. TWC regulations and policy statements are in compliance with current federal law.

### **Goals and expected outcomes of waiver**

Under WIOA, all required one-stop partners must pay infrastructure costs based on a proportionate share of their use of the workforce system and the relative benefit received, regardless of whether they are physically colocated at a one-stop center or not. That requirement imposes a disincentive for one-stop partners to fully integrate, as integration requires going through the cumbersome, burdensome, and costly process of determining, and periodically reassessing, their proportionate contributions to infrastructure funding. These requirements could also create a disincentive for partner programs to make referrals to other partner programs, thereby inhibiting integration and continuous workforce system improvement.

Limiting the infrastructure funding requirement to only those partners that are colocated would help states and Local Workforce Development Boards (Boards) and their workforce partners to move toward a fully integrated workforce system.

#### **Goals:**

- **Fully integrated workforce system**

Allowing local flexibility in how infrastructure costs are funded would help maintain an environment that promotes integration among partners.

- **Improved service delivery to workforce system customers**

Excluding non-colocated required partners from paying infrastructure costs would lift financial and administrative burdens from those partners, further incentivizing those partners to remain committed to creating a fully integrated workforce system.

#### **Programmatic Outcomes:**

The approval of this waiver would allow for continued local flexibility in how infrastructure costs are funded and maintain an environment that promotes integration among partners.

### **Department of Labor's policy priorities**

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

- encourages cooperation among partners that leads to improved services to job seekers and employers;
- promotes integration of services; and
- maintains unity among all partners within the workforce system.

### **Individuals impacted by the waiver**

This waiver is intended to benefit job seekers and employers by encouraging workforce partners to fully engage in an integrated workforce system.

### **Process for monitoring waiver implementation progress**

TWC has a monitoring system that measures results for employers and other customers who use the Texas workforce system. TWC will monitor infrastructure funding requirements to ensure that the state and Local Workforce Development Boards (Boards) meet their compliance objectives. TWC will monitor progress under this waiver by reviewing subrecipient monitoring reports and through the provision of technical assistance to Boards as needed.

### **Notice to affected Boards**

TWC notified all Boards that the agency is seeking this waiver request and sought their input prior to submitting this request to the US Department of Labor Employment and Training Administration.

### **Public comment**

To ensure meaningful public comment, including comments from business and organized labor, TWC will include this waiver request as part of the agency's WIOA plan modification when the plan modification is presented for public comment.

### **Waiver impact**

TWC will collect information about this waiver through its monitoring system. If the state requests renewal of this waiver, then TWC will provide the most recent outcomes data available.

## **WAIVER REQUEST 6**

### **Eligible Training Providers Performance Reports**

#### **Statutory and regulatory requirements to be waived**

The Texas Workforce Commission (TWC) is seeking a waiver of Workforce Innovation and Opportunity Act (WIOA) §116(d)(4) and 20 CFR §677.230(a)(5) to allow eligible training providers (ETPs) to collect and report performance data for WIOA-funded participants only.

#### **Actions taken to remove state or local statutory or regulatory barriers**

There are no state or local statutory or regulatory barriers to implementing the requested waiver. TWC regulations and policy statements are in compliance with current federal law.

#### **Goals and expected outcomes of waiver**

Under WIOA §116(d)(4)(A) and 20 CFR §677.230(a)(5), ETPs must report performance data with respect to all individuals engaging in a program of study (or the equivalent). While TWC recognizes the value and importance of monitoring provider performance, requiring ETPs to produce data on all individuals instead of just WIOA-funded participants places an undue burden on ETPs to collect, enter, and report excessive data. This is especially burdensome when ETPs have many students of whom only a small percentage are WIOA participants. The US Departments of Labor (DOL) and Education acknowledge this burden in their response to comments regarding §677.230 in the preamble of the WIOA Final Rule by stating, "The Departments are cognizant of the reporting burden the ETP performance report places on ETPs and do not want to place additional burden on these entities," yet did not change the regulatory text.

Further, ETPs and TWC are concerned that providing data—including Social Security numbers—on all individuals engaging in a program of study (or the equivalent) instead of WIOA-funded participants only may conflict with the Family Educational Rights and Privacy Act (FERPA), which protects the privacy of student education records. Generally, schools must have written permission from the parent or eligible student to release any information from a student's education record (34 CFR §99.30). Releasing student information on individuals who are not workforce system participants without their explicit consent may be in violation of federal law and compromise their personally identifiable information (PII) and potentially make those students vulnerable to identity theft and privacy risks.

Burdensome reporting requirements combined with mandatory submission of PII for non-WIOA-funded participants disincentivizes training providers from participating or remaining in the ETP system. A shortage of participating providers could result in limited customer choice locally or even statewide.

Under this waiver, ETPs will continue to collect and report performance data for all WIOA-funded participants in accordance with WIOA §116(d)(4)(A) and as specified at 20 CFR §677.230.

**Goals:**

- **Ease undue reporting burden on ETPs**

Reporting performance data on all individuals engaging in a program of study (or the equivalent) consumes considerable time and expense. Reducing ETPs' reporting requirements to include only WIOA-funded participants would save considerable time and expense to allow ETPs to focus on education and training outcomes while still providing the required data on WIOA-funded participants.

- **Ensure protection of non-WIOA participants' PII**

Not reporting data for individuals who are not WIOA participants would reduce ETPs' liability for potential breach of those individuals' PII.

- **Ensure that local areas have sufficient numbers of, and diversity of, training providers**

Establishing a more provider-friendly system will help ensure that local areas have sufficient numbers of, and diversity of, training providers necessary to create an effective marketplace of training programs for WIOA participants utilizing ITAs.

- **Incentivize training providers to participate in the ETP system**

Minimizing the reporting burden and eliminating the need to provide sensitive data on non-WIOA-funded students would make ETP participation more attractive to training providers and would therefore help increase the number of new ETPs and retain providers that are already participating in the ETP system.

- **Ensure accuracy of performance data**

Eliminating reporting barriers and limiting reporting to only WIOA-funded participants would result in more consistent and more accurate provider performance data.

- **Maximize customer choice**

A provider-friendly ETP system attracts more training providers, resulting in increased customer choice.

**Programmatic Outcomes:**

Approval of this waiver would reduce the reporting burden on ETPs and allow them to focus more time and resources on producing successful outcomes for WIOA-funded participants as well as for their non-WIOA students.

**Department of Labor’s policy priorities**

This waiver aligns with DOL’s policy priorities in that it:

- connects education and training strategies by reducing the reporting burden on ETPs, thus allowing them to focus more time and resources on producing successful outcomes for WIOA-funded participants; and
- further protects the privacy rights of ETPs’ students who are not WIOA participants.

**Individuals impacted by the waiver**

This waiver is intended to reduce the reporting burden on ETPs while still requiring them to report all required performance data for all WIOA-funded participants.

**Process for monitoring waiver implementation progress**

TWC will continue to collect data from ETPs on their WIOA-funded students and to submit that data via TWC’s annual report to DOL.

**Notice to affected Boards**

TWC notified all Boards that the agency is seeking this waiver request and sought their input prior to submitting this request to the US Department of Labor Employment and Training Administration.

**Public comment**

To ensure meaningful public comment, including comments from business and organized labor, TWC will include this waiver request as part of the agency’s WIOA plan modification when the plan modification is presented for public comment.

**Waiver impact**

Through this waiver, ETPs will be more willing to submit data on their WIOA-funded students and to remain in the ETP program, thus allowing the Texas workforce system to continue delivering essential training services that meet the needs of employers, job seekers, and workers.

**WAIVER REQUEST 7**

## **Reallocation Waiver**

### **Statutory and regulatory provisions to be waived**

The Texas Workforce Commission (TWC) is seeking a waiver from the provisions of the Workforce Innovation and Opportunity Act (WIOA) §128(c)(3) and §133(c), regarding reallocation among local areas. This waiver would provide flexibility to TWC in redistributing funds among workforce areas. Upon approval, this waiver, through administrative efficiencies, will allow for the opportunity to further workforce system integration. Texas' prior waiver request regarding reallocation provisions under WIOA §128(c)(3) and §133(c) and the provisions of 20 CFR §667.160 was approved by the US Department of Labor Employment and Training Administration (DOLETA) on June 23, 2016, and remains in place through June 30, 2018. TWC is requesting an extension of this waiver upon expiration.

### **Actions taken to remove state or local statutory or regulatory barriers**

There are no state or local statutory or regulatory barriers to implementing the requested waiver. TWC regulations and policy statements are in compliance with current federal law.

### **Waiver goals and expected outcomes**

TWC requests to continue this waiver of the WIOA statutes relating to the redistribution of recaptured local funds and proposes to base the redistribution of WIOA funds on TWC's allocation rules (40 TAC §§800.51-800.75). TWC ensures that financial reporting will be consistent with current DOLETA requirements and that federal funds will be effectively managed for maximum service provision and program performance.

#### **Goals:**

- **Redistribution of recaptured funds to workforce areas based on factors established by TWC**

The waiver request also allows TWC to ensure that funds are redistributed to those workforce areas with the greatest need. In doing so, TWC will determine the amounts to be redistributed to workforce areas based on factors such as:

requested amount;

demonstrated need for and ability to use additional funds to serve low-income individuals, public assistance recipients, dislocated workers, and unemployment insurance claimants;

demonstrated capacity to expend the formula funds;

a Board's established plan for working with at least one of the governor's industry clusters, as specified in the Board's plan; and

performance in the current and prior program years.

- **Facilitation of maximum expenditure of recaptured federal funds**

TWC seeks to redistribute workforce funds to workforce areas that have achieved not only targeted expenditure levels but also established performance targets. Redistributing funds based solely on whether a workforce area achieves its expenditure target does not address performance issues, such as whether the workforce area met employers' needs for a highly skilled and job-ready workforce.

- **Improvement of administrative efficiencies**

Approval of this waiver will serve to minimize administrative processes and costs of contracting by using similar redistribution procedures that support workforce system integration.

**Programmatic Outcomes:**

The statutory reallocation requirements can be fulfilled; however, the amount of funds available for reallocation may be so small that it is cost prohibitive. By using TWC's allocation rules for the redistribution of funds, TWC can ensure that federal funds will be more effectively and efficiently managed for maximum service provision and program performance. Approval of this waiver may not result in significantly higher performance outcomes, but it will provide the opportunity for recaptured funds to be redistributed to workforce areas where the greatest potential impact may be realized. This waiver will streamline administrative practices, allowing for greater efficiency in meeting the workforce development needs of employers and job seekers. Furthermore, it will enhance the quality of services in those workforce areas that have demonstrated consistent performance outcomes. Approval of this waiver will result in a reduction of unnecessary administrative processes.

**Individuals impacted by the waiver**

Workforce areas that provide quality services will have access to additional resources to meet the employers' needs, job seekers, and incumbent workers. Additionally, the waiver will allow TWC to continue to promote the cost benefits of improved administrative efficiencies, encouraging the increased leveraging of resources within the workforce areas. As a result, TWC will increase services such as enhanced education, employment, and training opportunities for disadvantaged populations and individuals with multiple barriers to employment.

**Process for monitoring waiver implementation progress**

TWC has a monitoring and performance accountability system that measures results for employers and other customers using the Texas workforce system. TWC continuously analyzes performance reports and compares actual performance with contracted targets. TWC will continue to adjust monitoring performance requirements to ensure that performance goals and objectives are met for WIOA services, including those programs created through the use of this waiver. TWC will monitor progress under this waiver by reviewing monthly expenditure and performance reports submitted by the Local Workforce Development Boards (Boards), through regularly scheduled conference calls with Board executive directors, and through its monitoring and performance accountability system.

In June 2006, TWC adopted rules to integrate our deobligation and reallocation policies for all Board-administered funds, thus establishing consistent procedures to apply to all workforce funds administered by the Boards, in support of a fully integrated system.

- Deobligations have a multilevel review:  
Expenditures are reviewed monthly (performance is also considered).  
If expenditures are trending low, staff provides technical assistance to the Boards.  
Boards are given an opportunity to get expenditures back on track.

When it becomes clear that Boards will not be able to meet the expenditure benchmark, discussion regarding the possible deobligation occurs and we receive concurrence from the Board executive directors that they will not be able to use the funds.

Final action is taken in a public Commission meeting.

- Reallocations have a multilevel review:
  - Expenditures are reviewed monthly (performance is also considered).
  - If expenditures are trending high, staff provides technical assistance to the Boards:
- Boards are given an opportunity to explain why expenditures appear to be high.
- Boards may identify that the numbers of participants to be served is higher than anticipated and additional funds are needed.
- Staff verifies through the performance reports that the number of participants is consistent with the Board's explanation of need.

Final action is taken in a public Commission meeting.

This process has worked well for several years with all Board-administered funds. This same process for reallocation would be used for WIOA funds upon approval of the waiver.

### **Notice to affected Boards**

TWC notified all Boards that the agency is seeking this waiver request and sought their input before submitting this request to DOLETA.

### **Public comment**

To ensure meaningful public comment, including comments from business and organized labor, TWC will include this waiver request as part of the agency's WIOA plan modification when the plan modification is presented for public comment.

### **Waiver impact**

Since its initial approval November 17, 2010, under WIA and then under WIOA in 2016, this waiver has provided TWC the flexibility to redistribute recaptured funds to workforce areas where the greatest potential may be realized, thus ensuring more effective and more efficient use of federal funds. TWC will continue to apply this strategy and monitor outcome success.