

<b>EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210</b>	<b>CLASSIFICATION</b> WIOA Title I and Wagner-Peyser Waivers
	<b>CORRESPONDENCE SYMBOL</b> OWI
	<b>DATE</b> December 19, 2018

**ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 8-18**

**TO:** STATE WORKFORCE AGENCIES  
STATE WORKFORCE ADMINISTRATORS  
STATE WORKFORCE LIAISONS  
STATE AND LOCAL WORKFORCE BOARD CHAIRS AND  
DIRECTORS  
STATE LABOR COMMISSIONERS

**FROM:** MOLLY E. CONWAY   
Acting Assistant Secretary

**SUBJECT:** Workforce Innovation and Opportunity Act (WIOA) Title I and Wagner-Peyser Act Waiver Requirements and Request Process

1. **Purpose.** This guidance communicates the requirements and the process for states to request a waiver of WIOA Title I or the Wagner-Peyser Act, and to provide information regarding available resources for developing waiver requests.
2. **Action Requested.** The Department of Labor (Department) requests that states review the available resources and consult the appropriate Employment and Training Administration (ETA) Regional Office to discuss whether the state could use the Secretary's waiver authority to increase flexibility and maximize innovation. States must submit waiver requests to ETA in accordance with this guidance.
3. **Summary and Background.**
  - a. **Summary.** WIOA establishes a broad framework for enhancing the skills of the American workforce when connecting job creators with qualified candidates in order to help businesses grow. Within this framework, the law strikes a balance of authority between state and local leaders who are well-positioned to make decisions about investing Federal employment and training funds effectively in the communities they serve. The Department recognizes that private sector-led state and local workforce development boards (WDBs), governors, and local elected officials have a deep understanding of the workforce needs in their communities, as well as a clear vision for meeting the needs of both employers and workers.

<b>RESCISSIONS</b> TEGL 01-15, TEGL 27-14, TEGL 26-09	<b>EXPIRATION DATE</b> Continuing
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- b. **Background.** The Department is committed to empowering states and local workforce areas with maximum flexibility and programmatic control to further enable them to achieve their goals. Under WIOA, the Secretary may grant states additional flexibility through the Secretary's waiver authority. Waivers are a tool for reducing barriers to WIOA implementation and spurring innovative programming options. While some waiver requests may fall outside the Secretary's waiver authority, the Department is dedicated to exploring available flexibilities with states to facilitate the achievement of their goals.

#### 4. Waiver Process and Resources.

- a. **Developing a Quality Waiver Request.** Attachment I provides details on the waiver authority found in the statute and regulations, as well as the limitations of the Secretary's waiver authority as it pertains to WIOA and the Wagner-Peyser Act. We request that states review the limitations of this authority before submitting a request.

Once a state has set goals and identified barriers in the implementation of WIOA Title I or the Wagner-Peyser Act, along with corresponding regulations that may impede achievement of those goals, we encourage those states to reach out to ETA regional staff to discuss their plans for a waiver request. This allows the state an opportunity to share its goals and ideas for innovation with ETA, and provides the opportunity to fully explore waiver options and existing flexibilities. Sharing a general outline of a state's waiver request with ETA staff prior to formal submission can help ensure the waiver request responds to all the required elements listed below.

WIOA section 189(i)(3)(B) and the regulations at 20 CFR 679.620 require waiver requests to include a discussion of the following elements:

- **The statutory and/or regulatory requirements the state would like to waive.** The state must clearly cite the statute and/or regulation(s) in its request, and ensure that the citations refer to the specific elements the state wishes to waive.
- **Actions the state has undertaken to remove state or local statutory or regulatory barriers.** In some instances, a potential waiver could conflict with state or local laws and/or policies. The state must provide a discussion of the steps it has taken to remove any potential obstacles in the waiver request as appropriate. Quite often, state or local policies do not present a conflict for the request, and a simple statement indicating that there are no state or local barriers is sufficient.
- **State strategic goal(s).** The state must precisely articulate the goals it seeks to achieve by requesting a waiver. Understanding the problem from the state's perspective can also help the Department identify other flexibilities if a request is beyond the Secretary's waiver authority. The state must also discuss how these goals relate to its Unified or Combined State Plan.
- **Projected programmatic outcomes resulting from implementation of the waiver.** When developing a request, the state must provide an estimate of how the waiver will improve outcomes or provide other tangible benefits for jobseekers or employers. Thoughtful consideration of discrete improvements that a waiver may provide to the

public workforce system will help the state develop a stronger waiver request and position the state to better evaluate waiver impact. For example, a state requesting to increase the employer reimbursement rate for on-the-job training (OJT) could estimate the number of additional participants or number of additional businesses that would make use of WIOA-funded OJT as a result of the waiver if approved. States have the discretion to determine how to measure a waiver's success and the specific data sources it intends to use to evaluate its impact.

- **Alignment with Department policy priorities.** The state must articulate how the waiver will align with the Department's policy priorities, such as supporting employer engagement, connecting education and training strategies, supporting work-based learning, and improving job and career results.
  - **Individuals, groups, or populations affected by the waiver.** States must describe the potential impact of a waiver on various system stakeholders, including how the waiver will impact services for disadvantaged populations, persons with barriers to employment, or businesses. For example, a waiver request to decrease the 75 percent out-of-school youth expenditure requirement should include a discussion of how the state will continue to serve out-of-school youth as it increases spending for in-school youth projects. It should also discuss the potential benefits for in-school youth.
  - **State plans for monitoring waiver implementation, including collection of waiver outcome information.** Just as states monitor the regular fiscal and programmatic implementation of WIOA at the local level, they must also consider how they will monitor a waiver that changes standard procedures. States must describe how they intend to oversee effective waiver implementation and any unique protocols that may be used in their waiver requests. For example, a state approved for a waiver to increase the OJT employer reimbursement rate would need to demonstrate fiscal adherence to the waiver-approved rate, and assess whether the waiver is allowing businesses to expand the use of OJT as a tool to increase the skills of workers.
  - **Assurance of state posting of the request for public comment and notification to affected local workforce development boards.** WIOA does not prescribe a specific amount of time for states to post a potential waiver for comment, but it does require the state to demonstrate a reasonable opportunity for public review and comment by all stakeholders, including businesses and organized labor. The state must also provide affected local boards with notice and opportunity to comment on the proposed waiver. The Department cannot approve waiver requests that have not completed the public comment process.
- b. Submission and Decision Process.** States may submit waiver requests as part of their State Plan or as a separate waiver plan; ultimately, a waiver constitutes a modification of the State Plan regardless of how it is submitted. States may submit waiver requests to [WIOA.Plan@dol.gov](mailto:WIOA.Plan@dol.gov) and should send a copy to the appropriate ETA Regional Office contact. While e-mail is preferred to expedite the review of waivers, the Department will also accept hard copy submissions mailed to the following address:

WIOA Waiver Coordinator  
200 Constitution Ave, NW Room S-4203  
Washington, DC 20210

By law, the Department has 90 days from receipt to respond to a waiver request. However, the Department makes every effort to expedite waiver review when possible, particularly for requests that have a precedent for decision. The review includes a legal assessment to determine whether the request is within the Secretary's waiver authority under statute, addresses the requirements at 20 CFR 679.620, as outlined in Section 4 of this guidance, and aligns with the Department's policy considerations.

ETA communicates the Department's decision(s) on state waiver requests via letter to the governor of the submitting state. WIOA Section 189(i)(3)(C)(ii) requires states to "execute a memorandum of understanding with the Secretary requiring the state to meet, or ensure that the local area for which the waiver is requested meets agreed upon outcomes and to implement other appropriate measures to ensure accountability as a condition for waiver approval." The Department considers the signed waiver decision letter from ETA to the state to be the aforementioned memorandum of understanding between the Secretary and the state, with the measures and outcomes agreed upon as those described in the state's waiver request. The approval letter will identify the duration of the waiver.

Part of the waiver lifecycle requires states to estimate and then regularly assess whether the waiver is successfully achieving state goals. As the goal of waivers is to provide opportunities to innovate and experiment with new approaches to service delivery, states with approved waivers must report specifically on waiver impact and outcomes in the WIOA Annual Report. The Department will consider outcome information as part of the criteria for granting renewal of a waiver, if requested.

- c. **WIOA Waiver Webpage.** The Department's WIOA web page at [www.doleta.gov/wioa/WIOA\\_Waivers.cfm](http://www.doleta.gov/wioa/WIOA_Waivers.cfm) offers several helpful resources including a list of all approved waivers so that states may share ideas and identify what the Department approved for other states. The webpage also includes a summary of the Secretary's waiver authority and limitations and a waiver request tool to help states develop a quality request. The Department also posts all waiver requests and decision letters to the web page.

5. **Inquiries.** Please direct inquiries to the appropriate ETA Regional Office.

6. **References.**

- WIOA (Pub. L. 113-128) Title I Sec. 189(i)
- 20 CFR 679.600 – 620; and
- WIOA Waiver Webpage. [https://www.doleta.gov/wioa/WIOA\\_Waivers.cfm](https://www.doleta.gov/wioa/WIOA_Waivers.cfm)

7. **Attachments.**

- Attachment I: Waiver Authority and Limitations
- Attachment II: Waivers Approved as of October 16, 2018.

## **Attachment I: Waiver Authority and Limitations**

**Waiver Authority.** Under the Secretary of Labor's waiver authority outlined in Section 189(i)(3)(A) of the Workforce Innovation and Opportunity Act (WIOA), the Secretary may waive certain provisions of WIOA Title I subtitles A, B, and E and provisions found in Sections 8 – 10 of the Wagner-Peyser Act. WIOA Section 189(i)(3)(B) and 20 CFR 679.620 identify elements that must be included in a waiver request. A governor may request waivers at any time by submitting a waiver plan with the State's Unified or Combined Plan or Plan modification, or by submitting a separate waiver plan. In either scenario, waivers constitute a modification of the State Plan.

**Limitations to WIOA Waiver Authority.** WIOA Section 189(i)(3)(A)(i) establishes the limitations of the Secretary's general waiver authority for WIOA title I, subtitles A, B, and E. As enumerated in this Section, the Secretary is statutorily prohibited from waiving any provisions related to the following:

- Wage and labor standards;
- Non-displacement protections;
- Worker rights;
- Participation and protection of workers and participants;
- Grievance procedures and judicial review;
- Nondiscrimination;
- Allocation of funds to local areas;
- Eligibility of providers or participants;
- The establishment and functions of local areas and local workforce development boards;
- Procedures for review and approval of state and local plans;
- The funding of infrastructure costs for one-stop centers; and
- Other requirements relating to the basic purposes of title I of WIOA, as identified in 20 CFR 675.100.

**Limitations to Wagner-Peyser Act Waiver Authority.** WIOA Section 189(i)(3)(A)(ii) establishes the limitations of the Secretary's general waiver authority for the Sections 8 – 10 of the Wagner-Peyser Act. As enumerated in this Section, the Secretary is statutorily prohibited from waiving any provisions related to the following:

- Requirements relating to the provision of services to unemployment insurance claimants and veterans; and
- Requirements relating to universal access to basic labor exchange services without cost to jobseekers.

**Attachment II: Waivers Through October 16, 2018**

ETA regularly updates a report of all approved waivers and posts the report to the WIOA Waiver Webpage at [www.doleta.gov/wioa/WIOA\\_Waivers.cfm](http://www.doleta.gov/wioa/WIOA_Waivers.cfm). Below is a list of waivers approved through October 16, 2018.

State	Waiver Description	Key WIOA and Regulatory Citations	Hurricane Related
Alaska	Waiver to allow the State Board to act as the Local Board	WIOA Section 107(b)	
Idaho	Waiver of the requirement that eligible training providers collect performance data for all students in a training program	WIOA Sections 116(d)(4)(A) and 122; 20 CFR 677.230(a)(4) and (5) and 20 CFR 680.460	
Idaho	Waiver to allow the State Board to act as the Local Board	WIOA Section 107(b)	
Idaho	Waiver of the requirement to conduct evaluations of workforce investment activities for adults, dislocated workers, and youth	WIOA Sections 134(a)(2)(B)(vi) and 129(b)(1)(A)	
Illinois	Waiver to allow the State to lower the local area and statewide reserve out-of-school youth expenditure requirement to 50 percent	WIOA Section 129(a)(4) and 20 CFR 681.410	
Illinois	Waiver of the requirement that eligible training providers collect performance data for all students in a training program	WIOA Sections 116(d)(4)(A) and 122; 20 CFR 677.230(a)(4) and (5) and 20 CFR 680.460	
Indiana	Waiver to allow the State to lower the local area and statewide reserve out-of-school youth expenditure requirements to 50 percent	WIOA Section 129(a)(4) and 20 CFR 681.410	
Indiana	Waiver to substitute the WIOA State Board membership requirements	WIOA Sections 101(b)(1) and (c) and 20 CFR 679.110(b)-(c).	
Kansas	Waiver of the requirement that eligible training providers collect performance data for all students in a training program	WIOA Sections 116(d)(4)(A) and 122; 20 CFR 677.230(a)(4) and (5) and 20 CFR 680.400-680.530	
Massachusetts	Waiver to increase on-the-job training employer reimbursement up to 90 percent for businesses with 50 or fewer employees	WIOA Section 134(c)(3)(H)(i) and 20 CFR 680.720 (b)	

Michigan	Waiver to allow the State to calculate the out-of-school youth requirement at the State level only	WIOA Section 129(a)(4) and 20 CFR 681.410	
Michigan	Waiver to lower to the local area and statewide out-of-school youth expenditure requirements to 50 percent	WIOA Section 129(a)(4) and 20 CFR 681.410	
Michigan	Waiver of the requirement that eligible training providers collect performance data for all students in a training program	WIOA Sections 116(d)(4)(A) and 122; 20 CFR 677.230(a)(4) and (5) and 20 CFR 680.400-680.530	
Minnesota	Waiver to allow the State to lower the out-of-school youth expenditure requirement for statewide and local area funds to 60 percent	WIOA Section 129(a)(4) and 20 CFR 681.410	
Missouri	Waiver of the obligation of eligible training providers to collect performance data on all students in a training program	WIOA Sections 116(d)(4)(A) and 122, and 20 CFR 677.230(a)(4) and (5) and 20 CFR 680	
Missouri	Waiver to lower to the local area and statewide out-of-school youth expenditure requirements to 50 percent	WIOA Section 129(a)(4)(A) and 20 CFR 681.410	
Nebraska	Waiver to allow the State to assign a single local workforce development area to multiple planning regions	WIOA Section 106(a)(2) and 20 CFR 679.210	
New York	Waiver of the requirement that states expend 75 percent of all Governor's reserve funds on out-of-school youth	WIOA Section 129(a)(4)(A) and 20 CFR 681.410	
North Carolina	Waiver of the requirement that eligible training providers collect performance data for all students in a training program	WIOA Sections 116(d)(4)(A) and 122; 20 CFR 677.230(a)(4) and (5) and 20 CFR 680.400-680.530	
Northern Mariana Islands	Waiver to lower to the local area and statewide out-of-school youth expenditure requirements to 50 percent	WIOA Section 129(a)(4) and 20 CFR 681.410	
Ohio	Waiver to allow the State to calculate the 75 percent out-of-school youth requirement for local area funds at the State level only	WIOA Section 129(a)(4) and 20 CFR 681.410	
Ohio	Waiver to allow local areas to provide in-school youth with individual	20 CFR 681.550	

	training accounts		
Ohio	Waiver to allow both WIOA and TANF funds to count towards the WIOA requirement that a local area expend 75 percent of its youth funds on out-of-school youth	WIOA Section 129(a)(4) and 20 CFR 681.410	
Pennsylvania	Waiver to allow WIOA Individual Training Accounts (ITAs) for in-school youth	20 CFR 681.550	
Puerto Rico	Waiver of the limitation on the use of funds for capitalization of business to allow funds to be used to capitalize small business that were affected by Hurricanes Irma and Maria, up to \$5,000 per affected business	WIOA Section 181(e)	X
Puerto Rico	Waiver to lower to the local area and statewide out-of-school youth expenditure requirements to 50 percent	WIOA Section 129(a)(4), and consistent with 20 CFR 681.410,	X
Puerto Rico	Waiver to permit the Commonwealth to exclude individuals affected by the disaster from the calculation of state and local performance measures	WIOA Section 116(b) and (c)	X
Puerto Rico	Waiver of statewide required activities to conduct evaluations	WIOA Sections 129(b)(1)(A) and 134(a)(2)(vi), section 116(e), section 169(a)	X
Puerto Rico	Waiver of the requirement that eligible training providers collect performance data for all students in a training program	WIOA Sections 116 and 122, and at 20 CFR 677.230 and 20 CFR 680.400 thru 680.530	
South Carolina	Waiver of the requirement that eligible training providers collect performance data for all students in a training program	WIOA Sections 116(d)(4)(A) and 122; 20 CFR 677.230(a)(4) and (5) and 20 CFR 680.400-680.530	
South Dakota	Waiver of the requirement that eligible training providers collect performance data for all students in a training program	WIOA Sections 116(d)(4)(A) and 122; 20 CFR 677.230(a)(4) and (5) and 20 CFR 680.400-680.530	
South Dakota	Waiver to lower to the local area and statewide out-of-school youth expenditure requirements to 50 percent	WIOA Section 129(a)(4)(A) and 20 CFR 681.410	
South Dakota	Waiver to allow WIOA individual	20 CFR 681.550	

	Training Accounts for in-school youth		
Tennessee	Waiver of the obligation of eligible training providers (ETPs) to collect performance data on all students in a training program	WIOA Sections 116(d)(4)(A) and 122 and 20 CFR 677.230(a)(4) and (5) and 20 CFR 680	
Tennessee	Waivers associated with the requirement that local areas expend 75 percent of local formula youth funds on out-of-school youth	WIOA Section 129(a)(4)(A) and 20 CFR 681.410	
Tennessee	Waiver to allow WIOA Individual Training Accounts (ITAs) for in-school youth	20 CFR 681.550	
Texas	Waiver to permit the State and its disaster-impacted local areas to use local Adult and Dislocated Worker formula funds for the development or identification of education and training programs that have the characteristics referenced in WIOA Section 134(a)(3)(A)(iii) and to allow the State and its disaster-impacted local areas to use Youth formula funds to support the development of alternative, evidence-based programs, and other activities that enhance the choices available to eligible youth and which encourage youth to reenter and complete secondary education, enroll in post-secondary education and advanced training, progress through a career pathway, and enter into unsubsidized employment that leads to economic self-sufficiency	WIOA Sections 129(b)(2)(B)) and 134(a)(3)(A)(iii)	X
Texas	Waiver to permit funds to be used to capitalize small businesses that were affected by Hurricane Harvey, up to \$5,000 per affected business	WIOA Section 181(e)	X
Texas	Waiver of the requirement that the State and workforce areas must spend not less than 75 percent of youth funds to provide services to out-of-school youth in hurricane-affected local areas	WIOA Section 129(a)(4) and 20 CFR 681.410	X
Texas	Waiver of the requirement that local	WIOA Section	X

	programs provide each of the 14 youth program elements to prioritize needed services to youth participants in hurricane-affected local areas	129(c)(2)	
Texas	Waiver to permit the state to exclude individuals affected by the disaster from the calculation of State and local performance measures	WIOA Section 116(b) and (c)	X
Texas	Waiver to permit the use of individual training accounts for disaster-impacted in-school youth in hurricane-affected local areas	20 CFR 681.550	X
Texas	Waiver of the obligation of eligible training providers (ETPs) to collect performance data on all students in a training program	WIOA Sections 116(d)(4)(A) and 122 and 20 CFR 677.230(a)(4) and (5) and 20 CFR 680	
Texas	Waiver of the requirement that states and local areas expend 75 percent of all Governor's reserve and local formula funds on out-of-school youth	WIOA Section 129(a)(4)(A) and 20 CFR 681.410	
Texas	Waiver to allow WIOA Individual Training Accounts (ITAs) for in-school youth	20 CFR 681.550	
Texas	Waiver of reallocation provisions to allow the State Workforce Development Board to develop additional criteria for the reallocation of recaptured funds	WIOA Sections 128(c)(3) and 133(c)(3)	
Texas	Waiver to allow the State to modify the performance measures used to negotiate Local Workforce Development Board performance	WIOA Section 166(c)	
Utah	Waiver to allow local areas to provide in-school youth with individual training accounts	20 CFR 681.550	