



JAN 31 2019

The Honorable Doug Burgum
Office of the Governor
State of North Dakota
600 East Boulevard Avenue
Bismarck, North Dakota 58505

Dear Governor Burgum:

Thank you for your waiver requests on November 6, 2018, regarding statutory and regulatory provisions of the Workforce Innovation and Opportunity Act (WIOA) and the accompanying plan to improve the statewide workforce development system (copy enclosed). This letter provides the Employment and Training Administration's (ETA) official response to the State's request and memorializes that North Dakota will meet the outcomes and implement the measures identified in its plan to ensure accountability as agreed to by North Dakota 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 and report on the performance data on all students in a training program at WIOA Sections 116(d)(4)(A) and (B) and 122(d)(2)(A) and 20 CFR 677.230(a)(4) and (5) and 20 CFR 680.430(b)(5).

ETA Response: 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 through June 30, 2020. ETA reviewed the State's waiver request and plan and determined that the requirements requested to be waived impede the ability of North Dakota to implement its plan to improve the workforce development system. 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.

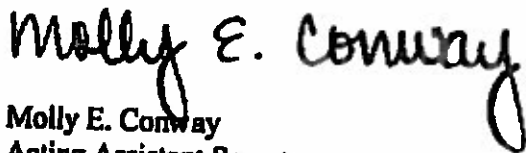
Requested Waiver: Waiver of WIOA Section 121(b)(1)(A)(ii) and 20 CFR 678.700 to limit mandatory infrastructure payments to only those required partners that are co-located at a one-stop center.

ETA Response: 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 may already exercise significant flexibility regarding infrastructure funding agreements.

WIOA Section 121(b)(1)(A)(ii) states that all required programs are responsible for contributing to one-stop infrastructure costs. However, partners are only responsible for making a contribution based on their proportional use of the office space. Programs that are not co-located at the one-stop have several options for fulfilling this obligation including non-cash, in-kind contributions, or outside funding from philanthropic or other private organizations. Additionally, with the agreement of all one-stop partners, the infrastructure funding agreement may consider factors such as program percentage of total on-site full-time equivalent (FTE) staff. For example, the program partners could agree that off-site programs, under a certain FTE percentage threshold, could contribute a flat fee that would not require burdensome tracking of co-enrollments and/or other factors. ETA will work with the State to develop infrastructure agreements that are both fair and feasible to all one-stop partners.

ETA is available for further discussion and to provide technical assistance to the State to support achieving its goals. The Department of Labor proposed additional flexibility in its Fiscal Year 2018 and 2019 budgets to give governors more decision-making authority to meet the workforce needs of their states and will continue to propose these additional flexibilities in future fiscal years. 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,



Molly E. Conway
Acting Assistant Secretary

Enclosure

cc:

Michelle Kommer, Commissioner, North Dakota Department of Labor and Human Rights
Nick Lalpui, ETA Dallas Regional Administrator, Employment and Training Administration
Eva Drinkwine, Federal Project Officer, Employment and Training Administration



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November 6, 2018

U.S. Department of Labor
Employment and Training Administration
Attn: Nicholas E. Lalpui, Regional Administrator
525 S. Griffin Street, Suite 317
Dallas, TX 75202

Re: Two WIOA Waiver Requests

Dear Mr. Lalpui:

As the state's administrative entity for Workforce Innovation and Opportunity Act (WIOA) funds, Job Service North Dakota continues a history of successful delivery of employment and training programs.

Please consider this request for two waivers. The first waiver is from the requirements related to the collection and reporting of performance data on all students participating in training programs listed on the state's Eligible Training Provider (ETP) List. This requirement is especially burdensome when ETPs have many students of whom, only a small percentage are WIOA participants.

The second request is to waive the requirement for WIOA partners who are not co-located and whose cost sharing methodology is co-enrollments and onsite One-Stop orientation. Based on the financial burden of implementing infrastructure cost sharing with the WIOA required partners who are not co-located within a one-stop location, North Dakota is asking for a complete waiver for this calculation due to the unreasonableness of the cost.

Should you or your staff have questions about the waiver, please feel free to Susan Gunsch at (701) 328-3105. Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink that reads "Michelle Kommer". The signature is written in a cursive, flowing style.

Michelle Kommer
WIOA Liaison

**WIOA Waiver Request
Infrastructure Costs for Non Co-located Partners**

The State of North Dakota

- (1) Identifies the statutory or regulatory requirements for which a waiver is requested and the goals that the State or local area, as appropriate, intends to achieve as a result of the waiver and how those goals relate to the Unified or Combined Plan:

The State of North Dakota respectfully requests a waiver of Section 121(h)(1)(B)(i) and 121(h)(2)(C)(i) of the Workforce Innovation and Opportunity Act concerning Funding of One-Stop Infrastructure. This request is specific to the costs involved in establishing the infrastructure funding agreement, creating the calculation methodology and executing the cost sharing between partners versus the financial benefit gain as a result. Job Service ND, the State's WIOA fiscal agent, has been the administrator for the following federal programs; Unemployment Insurance, Workforce Investment Act/Workforce Innovation and Opportunity Act Title I (Dislocated Worker, Youth & Adult), Wagner-Peyser Act, Jobs for Veterans State Grant, and Trade Adjustment Assistance. Job Service ND also administers the Supplemental Nutrition Assistance Program employment and training functions and a portion of the Temporary Assistance for Needy Families employment and training and discretionary programs. Historically Job Service ND has allocated overhead/infrastructure costs across all programs by physical location based on staff charges. All co-located programs have and currently share in the proportionate infrastructure costs.

In regard to programs not co-located, North Dakota tracked the infrastructure costs for the six-month period from January 2018 through June 2018. The costs were based on co-enrollment and on-site orientation customer data, the method agreed upon to determine benefit for partner programs not co-located. The costs for the WIOA required programs located off-site of the one-stop centers was calculated and illustrated in the following table.

January 2018 through June 2018

Partners	Total Partner Allocation
WIOA	\$61,503
Wagner-Peyser	\$179,344
JVSG	\$14,702
Trade Act	\$1,383

Unemployment Insurance	\$13,083
RESEA	\$ 7,558
Adult Ed*	\$ 32
Vocational Rehabilitation*	\$126
TANF	\$28,087
NFJP*	-
Job Corps*	\$468
SCSEP*	-
Perkins-Post Secondary*	\$43
Non Required	\$5,387
Total	\$325,561

*partners not co-located

The total cost for partners not co-located for One-Stop Infrastructure Costs for the first six months of 2018 equals approximately \$670. Using 3% of the salary for the Finance and the WIOA Statewide staff, which is significantly conservative, the administrative costs are at a minimum \$5,600. Additional staff resources are required for tracking, reporting and verifying partner fair share. That resource commitment is additional to the amount stated above.

In Program Year 2018, North Dakota received the lowest allocation of WIOA Title I funds of all 50 states. This has historically been the case. Based on the financial burden of implementing infrastructure cost sharing with the WIOA required partners who are not co-located within a one-stop location, North Dakota is asking for a complete waiver for this calculation due to the unreasonableness of the cost. North Dakota wishes to completely waive the requirement for non- co-located WIOA partners whose cost sharing methodology is co-enrollments and onsite One-Stop orientation. The co-located partners within the American Job Center will bear the insignificant additional costs as a result of this waiver request.

(2) Describes the actions that the State or local area, as appropriate, has undertaken to remove State or local statutory or regulatory barriers;

No state statutory or regulatory barriers exist at this time.

(3) Describes the goals of the waiver and the expected programmatic outcomes if the request is granted;

The goal of this waiver request is a responsible and efficient use of federal funds. North Dakota will continue its practice of allocating overhead/infrastructure costs across all on-site programs by physical location based on staff charges and customer use. This practice addresses nearly all of the infrastructure costs for the one-stop locations.

(4) Describes how the waiver will align with the Department's policy priorities; such as (A) Supporting employer engagement; (B) Connecting education and training strategies;

(C) supporting work based learning; (D) improving job and career results, and (E) other guidance issued by the Department.

Resources committed to the recording, reporting, verifying and calculating the distribution of costs across WIOA partners in relation to each one-stop location diverts attention from the Department's policy priorities. Focus on the accuracy of recording on behalf of local staff diminishes emphasis on individualized services to customers. Administrative staff, likewise, better utilize partner communication on connecting education and training strategies and strengthening private and public relationships through sector strategies. Resources and efforts to enhance sector strategies better serve North Dakota to meet our workforce challenges versus the infrastructure costs regulatory guidance creating a negative imbalance of financial gain.

(5) Describes the individuals affected by the waiver, including how the waiver will impact services for disadvantaged populations or individuals with multiple barriers to employment.

The WIOA required partners not co-located at a one-stop location will be relieved of the administrative burden of calculating and implementing the infrastructure costs based on co-enrollments and on-site orientations.

(6) Describes the processes used to: (A) Monitor the progress in implementing the waiver; (B) Provide notice to any local board affected by the waiver; (C) Provide any local board affected by the waiver an opportunity to comment on the request; (D) Ensure meaningful public comment, including comment by business and organized labor, on the waiver; (E) Collect and report information about waiver outcomes in the State's WIOA Annual Report.

North Dakota will utilize the methodology established in the Infrastructure Funding Agreement to share costs for the one-stop locations with on-site partners. This information will be included in the WIOA Annual Report.

(7) Public Comment

This waiver request was posted on the Job Service North Dakota website for comment from October 25, 2018 to November 5, 2018 and reviewed by State Board members and interested stakeholders. Only comments in support of this waiver were received.

WIOA Waiver Request
Requirement to collect and report performance data on all students in
programs on the state's Eligible Training Provider List

The State of North Dakota

The Eligible Training Provider List (ETPL) federal requirements are creating a hardship for many training providers, including the technical colleges, resulting in decreased numbers of providers adding their programs to the ETPL. Many training providers do not have existing staff to perform the data gathering processes required to submit program information and performance data and cannot justify hiring additional staff. The regulations and related performance measures requiring providers to include an "all students" cohort also interfere with FERPA laws. Providers do not currently have students complete a waiver for data gathering purposes. These issues are leading to North Dakota having less training providers on the list. JSND has a workforce support staff that is providing individualized technical assistance to training providers in an effort to reduce hardships relating to collecting provider and program data.

The State of North Dakota seeks approval of the following statutory and regulatory waiver in accordance with the Secretary's waiver authority outlined in Section 189(i)(3)(A) of the Workforce Innovation and Opportunity Act (WIOA) and 20 CFR and 679.600. This waiver request will assist North Dakota to further develop its workforce while continuing to focus on innovative strategies for a demand-driven workforce.

1. Waiver from the Eligible Training Provider data collection and reporting requirements

North Dakota is seeking a waiver from the requirements outlined in the WIOA at Sections 116 and 122, and at 20 CFR 677.230 and 20 CFR 680.400 thru 680.530, which require the collection and reporting of performance related data on all students participating in training programs listed on the state's Eligible Training Provider List (ETPL).

While JSND 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.

2. Actions Taken to Remove Barriers

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

The state is working to leverage existing systems to assist with meeting the WIOA ETP performance reporting requirements.

Despite these efforts, the state has faced several challenges while working to implement the WIOA ETP requirements, which include:

- Ensuring that local areas have sufficient members of, and diversity of, training providers necessary to create an effective marketplace of training programs for WIOA participants utilizing ITAs.
- Ensuring fairness in the process of determining training provider eligibility.
- Reducing the burden on training providers to submit performance information to the state which may not be readily accessible to the provider.

3. Goals, Outcomes and Benefits Related to this Waiver Request include:

More numerous and varied training offerings for individuals utilizing ITAs via the public workforce system (greater consumer choice).

North Dakota's workforce has a skills gap. This was illustrated by 21st Century Tactical Workforce Plan presented by the College Technical Education Council (CTEC) in the Summer of 2018. The CTEC presented this document to help guide the decision-making process related to workforce training, and to demonstrate the CTEC's acknowledged role and responsibility in moving the state's workforce initiatives regarding skill development. The requirement for providers to report on all students in a program, contributes to the challenge of meeting the state's skills gap. This is amplified by the low unemployment rate in our state. Increasing post-secondary offerings, that are convenient will assist us in meeting employer demand.

More training providers may lead to lower cost and more robust demand-driven training options.

Stronger partnerships and relationships between providers and the public workforce system.

Greater utilization of the ETPL by individuals pursuing training in North Dakota related to jobs that are in-demand by employers now and in the future.

4. Individuals Impacted by the Waiver

Individuals who access training services in North Dakota via ITAs, JSND staff, AJCs and training providers will benefit from this waiver.

5. Monitoring and Implementation

Annual WIOA reviews will include an evaluation of how waivers are impacting local programs to ensure programmatic goals and outcomes are being met. North Dakota will collect and report information about waiver outcomes in the State's WIOA Annual Report.

6. Notice to Affected Local Boards

North Dakota is a single workforce area state. The individuals who are involved with the ETP performance requirement were involved in the development and finalization of this waiver request.

7. Public Comment

This waiver request was posted on the Job Service North Dakota website for comment from October 25, 2018 to November 5, 2018 and reviewed by State Board members and interested stakeholders. Only comments in support of this waiver were received.