



JUN 12 2018

The Honorable Roy Cooper  
Governor of North Carolina  
20301 Mail Service Center  
Raleigh, North Carolina 27699-0301

Dear Governor Cooper:

Thank you for your waiver request 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 as part of your WIOA State Plan modification on March 28, 2018 (copy enclosed). This letter provides the Employment and Training Administration's (ETA) official response to the State's request and memorializes that North Carolina will meet the outcomes and implement the measures identified in its plan to ensure accountability agreed to by North Carolina 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: The State is requesting a waiver of the required collection and reporting of performance-related data on all students participating in training programs listed on the state's Eligible Training Provider List (ETPL), as outlined in WIOA Sections 116 and 122.

The State's request to waive the requirement to collect and report performance data on all students participating in training programs on the State's ETPL 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 North Carolina 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. While the Department recognizes the importance of informing consumer choice through the provision of quality data on training outcomes, it also recognizes 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. Therefore, ETA approves this waiver for Program Years 2018 and 2019 (July 1, 2018 – June 30, 2020).

ETA is available for further discussion and to provide technical assistance to the State to support achieving its goals. Also, the Department proposed additional flexibility in its Fiscal Year 2019 Budget to give governors more flexibility to meet the workforce needs of their states. If you have questions or wish to explore additional flexibility, feel free to contact my office at (202) 693-2772.

Sincerely,



Rosemary Labisky  
Deputy Assistant Secretary

Enclosure

cc:

Cherie Berry, Commissioner, North Carolina Department of Labor  
Les Range, Atlanta Regional Administrator, Employment and Training Administration  
Julian Hardy, Federal Project Officer, Employment and Training Administration

## WIOA State Plan 2018 Modification Waiver Request

### The State of North Carolina

The North Carolina Division of Workforce Solutions (DWS) 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 Providers List (ETPL). Under WIOA Section 116(d)(4)(A) and 20 CFR 677.230(a)(5), Eligible Training Providers must report performance data with respect to all individuals engaging in a program of study (or the equivalent). While DWS 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 20 CFR 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," however, there was no change to the regulatory text. Further, ETPs and DWS are concerned that providing data 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). Additionally, requiring ETPs to provide data on all individuals instead of WIOA-funded participants may dissuade the institution from participating as a WIOA program provider, thereby significantly limiting consumer choice. Under this waiver, ETPs will continue to collect and report performance data for all WIOA-funded participants in accordance with WIOA Section 116(d)(4)(A) and as specified at 20 CFR 677.230.

**Actions to Remove Barriers** There are no state or local statutory or regulatory barriers to implementing the requested waiver. North Carolina regulations and policy statements are in compliance with current federal law.

**Goals of Waivers** 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. **Programmatic Outcomes** - Reduction of the reporting burden on ETPs allows them to focus more time and resources on producing successful outcomes for WIOA-funded participants as well as for their non-WIOA students. In addition, the waiver will provide the following: More available

and varied training offerings for individuals utilizing ITAs via the public workforce system (greater customer choice). More training providers can lead to lower cost options. Greater utilization of ETPL by individuals pursuing training via ITAs. Stronger partnerships and relationships between training providers and the public workforce system. Enhanced ability of local boards to respond quickly and efficiently to immediate local job seeker and employer needs.

**Alignment with Priorities** 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.

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.

**Impact** Describes the individuals affected by the waiver, including how the waiver will impact services for disadvantaged populations or individuals with multiple barriers to employment. This waiver is intended to reduce the reporting burden on ETPs while still requiring them to report required performance data for all WIOA-funded participants. 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 North Carolina workforce system to continue delivering essential training services that meet the needs of employers, job seekers, and workers. (6) **Processes** Describes the processes used to:

(A) Monitor the progress in implementing the waiver; DWS will continue to collect data from ETPs on their WIOA-funded students and to submit that data via DWS' annual report to DOL.

(B) Provide notice to any local board affected by the waiver; Concurrent with the submission of this waiver request, the state will notify all 23 local Workforce Development Board directors of the state's intent of this request. Upon approval of the waiver, North Carolina will issue a Policy Statement notifying all local Workforce Development Boards that this practice will be implemented effective July 1, 2018.

(C) Provide any local board affected by the waiver an opportunity to comment on the request; Local Workforce Development Boards will be able to contact the Division of Workforce Solutions prior to submission of the State Unified WIOA Plan modification to discuss and have input on the waiver request. All local boards will also have access to the draft Unified Plan and opportunity to comment during the public review and comment period.

(D) Ensure meaningful public comment, including comment by business and organized labor, on the waiver.

This waiver request will be included in the Unified Plan submission and subject to public comment within Plan guidelines and the WIOA requirements.

(E) Collect and report information about waiver outcomes in the State's WIOA Annual Report. North Carolina will collect and report information about waiver outcomes in the State's WIOA Annual Report.