

Eligible Training Provider (ETP) Performance Data Waiver Request

Statutory and regulatory requirements to be waived:

The State of Nevada (state) requested a waiver of the obligation of eligible training providers (ETPs) to collect performance data on all students in a training program at the Workforce Innovation and Opportunity Act (WIOA) sections 116(d)(4)(A) and 122; and, 20 CFR §677.230(a)(4) and (5) and 20 CFR §680. Said waiver was approved on December 13, 2018, effective through June 30, 2020.

The state is now seeking a continuation of this waiver of the obligation of ETPs to collect performance data on all students in a training program at the above-referenced WIOA authorities, effective July 1, 2020 through June 30, 2022.

Specifically, the state requests waiver authority to report a “0” in the eligible training provider performance report for non-WIOA program participants in the following nine data elements related to “all” individuals in training (data elements 120-128 on form EA 9171):

- 120 the number of individuals served;
- 121 the number exited (includes students who completed, withdrew or transferred out of the program);
- 122 the number who completed the program;
- 123 the number of exiters employed in the 2nd quarter after exit;
- 124 the number of exiters employed in the 4th quarter after exit;
- 125 median earnings of exiters in the 2nd quarter after exit;
- 126 the number of exiters who attained a credential during participation or within one year after exit;
- 127 average earnings in the 2nd quarter after exit; and
- 128 average earnings in the 4th quarter after exit.

If approved, this waiver would allow eligible training providers (ETPs) to collect and report performance data for WIOA-funded participants only.

Issues identified prompting this waiver request:

WIOA §116(d)(4)(A), 20 CFR §677.230(a)(5) and 20 CFR §680 Subpart D require that training providers participating in WIOA report performance data for all individuals engaging in a program of study (both WIOA funded and non-supported) that is included on the Eligible Training Provider List (ETPL), which is maintained by the Department of Employment, Training and Rehabilitation (DETR) and Local Workforce Development Boards (LWDB); Nevadaworks and Workforce Connections. This federal requirement creates a hardship for many training providers, resulting in fewer programs applying for inclusion on the state’s ETPL and fewer training opportunities and choices for program participants.

Nevada recognizes the importance of monitoring provider performance; however, requiring training providers to produce data on **all** individuals, instead of solely WIOA-funded participants, could reduce the training choices and opportunities available to program participants by fewer ETPs and training programs applying for inclusion on the ETPL.

Nevada has identified several issues impacting delivery of training services to program participants that prompt this waiver request. These issues include and address:

- Insuring a sufficient numbers of training providers to provide a breadth of choices to program participants.
- Reducing the administrative burden on training providers to provide performance information to the state, particularly for private institutions without access to all data sources.
- The potential liability risk to ETPs collecting, maintaining and reporting students' personally identifiable information (PII; e.g., social security numbers) and other sensitive data.
- Educational institutions' concerns with unauthorized access to their student data systems by potentially malicious parties.
- The state's lack of the necessary data collection and validation tools needed to comply with the requirement to report **all** training program participant data, specifically non-WIOA student participants.

An example of the significant burden and impact that this federal requirement places on smaller training providers with limited administrative capacity is demonstrated in proprietary schools providing Commercial Driver's License (CDL) training. Graduates are often transient and work throughout the country, therefore making it difficult for training providers to obtain contact, identification and employment data on these program participants, particularly for students who were not assisted by WIOA and who do not recognize the importance of providing this post-training/graduation information.

These issues also apply to program participants seeking higher academic and/or career credentials. The Nevada System of Higher Education (NSHE) and private institutions typically have large numbers of students wherein only a small percentage are WIOA participants. This results in these institutions considering that the administrative burden outweighs the benefits obtained from educating WIOA students. Ultimately, this reduces the opportunities for students and the diversity of training programs that these institutions could offer.

The state believes that providing data on **all** individuals engaging in a program of study, instead of just WIOA-funded participants, conflicts with both the Family Educational Rights and Privacy Act of 1974 (FERPA; 20 U.S.C. §1232 g) and Nevada state law (NRS 388.267; NRS 388.272), which protect the privacy of student education records. Releasing student information on individuals who are not workforce system participants without their explicit consent could potentially violate federal and state privacy laws and potentially compromise their personally identifiable information (PII).

Under this waiver, Nevada will continue to require training providers 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 (a), and will assist training providers in this process according to the requirements of 20 CFR 680.490.

Goals and expected outcomes of waiver:

Goals:

The goal of increasing training/educational choices for WIOA clients can be greatly assisted by reducing barriers that training service providers must contend with, as well as waiving the requirement to report on students who obtain no benefit from WIOA. State strategic goals supported by this waiver request include, but are not limited to:

1. **Increased availability of high quality training/education options for WIOA participants.** This proposed waiver could increase the number of training providers on the ETPL resulting in additional choices for WIOA participants.
2. **Ensured protection of PII of non-WIOA participants.** Not requiring the reporting of data for non-WIOA students would reduce the chances of unauthorized disclosure of student PII.

Programmatic Outcomes:

Approval of this waiver would:

1. Reduce the reporting and administrative burdens placed on the training providers, which would allow them to focus time and resources on producing successful outcomes for both their WIOA-funded and non-WIOA students.
2. Increase access and opportunities by promoting a wider variety of training programs through the increase of ETPs on the ETPL.
3. Potentially decrease training costs through the increase of ETPs and training options available to individuals.
4. Provide a wider breadth of training options, with increased demand-driven training options for individuals.

Actions to Remove Barriers:

There is currently no state or local statutory or regulatory barrier to implementing the requested waiver. The State of Nevada's regulations and WIOA State Compliance Policies are in compliance with current state and federal laws.

Department of Labor Policy Priorities:

This proposed waiver will support the U.S. Department of Labor's (USDOL) education and training strategy priorities to allow the increase in training and education choices available to WIOA participants, and encourage training providers to focus on successful outcomes for WIOA-funded participants while protecting the privacy rights of non-WIOA students.

Individuals impacted by the waiver:

This waiver will reduce the reporting burden on training providers while retaining the requirement to report all required performance data for all WIOA-funded participants resulting in significant impact on multiple populations of the public workforce system including, but not limited to:

- Individuals who access training services in Nevada via Individual Training Accounts (ITAs)

- Nevada Department of Employment, Training and Rehabilitation (DETR), Employment Security Division (ESD), Workforce Investment Support Services' (WISS) staff
- Nevada Jobconnect and One-Stop Career Center staff
- State workforce development board and staff
- Local workforce development boards and staff
- Staff and administrators of ETPs

Continued Eligibility:

To comply with the state's responsibility to maintain a procedure whereby eligible training providers and programs maintain their continued eligibility as provided in 20 CFR § 680.460, the state has established the following WIOA State Compliance Policies:

- [1.9 Individual Training Accounts](#)
- [1.12 WIOA Selection of Eligible Training Providers](#)
- [1.13 Termination of Training Service Providers](#)
- [5.7 Oversight and Monitoring](#)

Process for monitoring the waiver implementation progress:

The state will obtain program information and required data from ETPs on their WIOA-funded students, and submit that information in the state's annual WIOA report to USDOL. Furthermore, the state will continue oversight, monitoring and technical assistance to ensure WIOA requirements for state, local areas and direct recipients of program funds are in compliance ([SCP 5.7](#)).

Notice to affected Boards:

The state will review this waiver request with local elected officials and local workforce board staff, and provide any relevant input and/or comments in an addendum to this waiver request.

Public comment:

The state will provide for public comment as required by 20 CFR §679.620 by providing the state's two local workforce development boards (i.e., Nevadaworks and Workforce Connections) opportunity to comment on said waiver. Furthermore, the state will ensure that meaningful public comment will occur, including comment by business and organized labor.

Waiver impact:

Under the provisions of this waiver, training providers will be able to submit data on their WIOA-funded students with less concern over control of PII or other sensitive data on non-WIOA students. This will increase retention of WIOA ETPL providers, increase market choices available to program participants and allow Nevada to continue delivering essential training services to meet the needs of employers, job seekers and workers.

Title 1-B Assurances:

The Unified State Plan must include assurances that:

1. The State has implemented a policy to ensure Adult program funds provide a priority in the delivery of training services and individualized career services to individuals who are low income, public assistance recipients and basic skills deficient. **Yes**
2. The State has implemented a policy to ensure local areas have a process in place for referring veterans with significant barriers to employment to career services provided by the JVSG program's Disabled Veterans' Outreach Program (DVOP) specialist. **Yes**
3. The state established a written policy and procedure that set forth criteria to be used by chief elected officials for the appointment of local workforce development board members. **Yes**
4. The State established written policy and procedures to ensure local workforce development boards are certified by the governor every two years in accordance with WIOA section 107(c)(2). **Yes**
5. Where an alternative entity takes the place of a State Board, the State has written policy and procedures to ensure the alternative entity meets the definition under WIOA section 101(e) and the legal requirements for membership. **N/A**
6. The State established a written policy and procedure for how the individuals and entities represented on the Governor's Workforce Development Board help to determine the methods and factors of distribution, and how the State consults with chief elected officials in local areas throughout the State in determining the distributions. **Yes**
7. The State will not use funds received under WIOA Title I to assist, promote, or deter union organizing in accordance with WIOA section 181(b)(7). **Yes**
8. The State distribute adult and youth funds received under WIOA equitably throughout the State, and no local area suffers significant shifts in funding from year-to-year during the period covered by this plan. **Yes**
9. If the Governor's Workforce Development Board, department, or agency administers State laws for vocational rehabilitation of persons with disabilities, that board, department, or agency cooperates with the agency that administers Wagner-Peyser services, Adult and Dislocated Worker Programs and Youth Programs under Title I. **Yes**
10. The State agrees to report on the impact and outcomes of its approved waivers in its WIOA Annual Report. **Yes**
11. The State has taken appropriate action to insure compliance with the Uniform Guidance at 2 CFR 200 and 2 CFR 2900, including that the State will annually monitor local areas to ensure compliance and otherwise take appropriate action to secure compliance with the Uniform Guidance under section WIOA 184(a)(3). **Yes**