

State of Nevada
Department of Employment, Training and Rehabilitation

PUBLIC NOTICE
For Public Comment
Regarding the Draft of a WIOA Waiver Request
August 31, 2018

The Governor's Workforce Development Board and the State of Nevada Department of Employment, Training and Rehabilitation (DETR), Nevada's administrative entity for Workforce Innovation and Opportunity Act (WIOA) Title 1-B programs are soliciting public comments on a draft waiver for WIOA §116(d) (4) at 20 CFR §677.230(a) (5) and at 20 CFR 680 Subpart D to allow eligible training providers (ETPs) to collect and report performance data for WIOA-funded participants only.

The purpose of this public notice is to disseminate the draft waiver and to request public comment on the waiver request.

Publishing of this notice meets the information requirements of the Workforce Innovation and Opportunity Act and demonstrates compliance with the Act and its regulation.

Public Comment

Citizens of the State of Nevada are invited to read the following draft waiver and make comments on areas of interest and/or concern. Comments may be submitted to Karlene Johnson representing the Department of Employment, Training and Rehabilitation, c/o Workforce Investment Support Services Unit at kfjohnson@detr.nv.gov . Written comments may also be directed to the Workforce Investment Support Services Unit c/o the Department of Employment, Training and Rehabilitation, 500 E. Third Street, Carson City, NV 89713. Public comments in response to this notice will be accepted through September 10, 2018.

ETPL Performance Data Waiver:

Statutory and regulatory requirements to be waived:

The State of Nevada is seeking a waiver of Workforce Innovation and Opportunity Act (WIOA) §116(d) (4) at 20 CFR §677.230(a) (5) and at 20 CFR 680 Subpart D to allow eligible training providers (ETPs) to collect and report performance data for WIOA-funded participants only.

Nevada has identified several issues impacting delivery of training services to program participants. These issues include:

- Insuring a sufficient numbers of training providers to provide a real choice 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.
- Student personal identification information (PII) and other sensitive data. Educational institutions are concerned with the issue of unauthorized access by malicious parties.

The goal of increasing training/educational choices for WIOA clients can be greatly assisted by reducing barriers that training service providers must contend with and the requirement to report on students who obtain no benefit from WIOA is one of the most significant.

Goals and expected outcomes of waiver:

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) included on the Eligible Training Provider List (ETPL) maintained by the Department of Employment, Training and Rehabilitation (DETR) and Local Workforce Development Boards (LWDB); Nevadaworks and Workforce Connections.

Nevada recognizes the importance of monitoring provider performance, however requiring training providers to produce data on all individuals instead of just WIOA-funded participants could reduce the training choices available to program participants.

Factors that impact this include the limited administrative capacity of smaller training providers to collect student data. An example of this in Nevada are proprietary schools providing CDL training. Graduates work throughout the country and it is difficult to obtain contact/identification/employment data particularly for students who were not assisted by WIOA and see no reason why they should have to provide this information.

These issues also apply to program participants seeking higher academic/career credentials. The Nevada System of Higher Education and private institutions will usually have large numbers of students with only a small percentage who are WIOA participants. This will result in these institutions considering that the administrative burden outweighs the benefits obtained from educating WIOA students reducing the opportunities for students and the diversity they could offer to the schools.

Furthermore, Nevada believes that providing data on all individuals engaging in a program of study instead of WIOA-funded participants conflicts with both the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. §1232 g), and Nevada state law (NRS 388.267) which protects the privacy of student education records. Releasing student information on individuals who are not workforce system participants without their explicit consent may be in violation of federal and state law (NRS 388.272) and could 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:

- **Increase the 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.
- **Ensure 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 reduce the reporting burden and allow training providers to focus time and resources on producing successful outcomes for both their WIOA-funded and non-WIOA students.

Department of Labor Policy Priorities:

This proposed waiver will support USDOL's 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.

Process for monitoring the waiver implementation progress:

The State of Nevada will obtain required data from ETPL agencies on their WIOA-funded students and submit that information in the States annual report to DOL.

Notice to affected Boards:

The State of Nevada will review this waiver request with Local Elected Officials and staff of the State's two Local Boards.

Public comment:

The State of Nevada will provide for public comment as required by 20 CFR 679.620.

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 personal information 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 a 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