

Summary of Comments

Draft Directive “ETPL Performance Waiver”

- 1. Comment:** The EDD received several requests to clarify the source of the performance data that will be used to measure performance of the Training Providers and to clarify the dates/years of performance data that will be used. One organization asked if this process is retroactive, or does it affect providers going forward.

Response: Performance reported to the Bureau of Private Post-Secondary Education (BPPE) is the performance data that will be used to evaluate a provider’s eligibility to list a specific program(s) on the ETPL. The BPPE requires training providers to submit performance reports on a calendar year basis. Performance reports are due in September of each year and published in January of the following year. The base year for initial performance will be Calendar Year (CY) 2013. Training providers submitted performance for CY 2013 in September 2014, which will be published in January 2015. Since CY 2014 is complete, and Training Providers will not have time to take action to increase student performance, EDD has extended the waiver period through CY 2015, with final performance data published in 2017. The chart below shows the BPPE Performance Dates, the date BPPE publishes performance and the entered employment rate that must be met in order for training providers to be eligible to receive a waiver.

BPPE Performance Dates	BPPE Performance Published	Entered Employment Rate (EER) (Statewide average)
January – December 2013	January 2015	54% (baseline)
January – December 2015	January 2017	64.2% (progress)
January – December 2016	January 2018	70%

We anticipate that this waiver policy will be incorporated into the new ETPL policy to be developed this year.

- 2. Comment:** The EDD received requests to clarify the performance calculation and the definition of “graduates available for employment.” One commenter pointed out that under BPPE; students who decide to continue post-secondary education do not affect the training provider’s placement rate while ETPL placement rates are negatively affected by these students.

Response: The performance data submitted by the providers to BPPE will be used to evaluate the provider’s eligibility to list a specific program(s) on the ETPL. The BPPE Act Regulations [Section 74112](#) provides the definition for performance and how it is calculated and includes exclusions for “graduates who, after graduation die, become incarcerated, are called to active military duty, are international students

that leave the United States or do not have a visa allowing employment in the U.S., or are continuing their educational in an accredited or bureau-approved postsecondary institution.” This definition is included in the *Policies and Procedures Handbook* included with *ETPL Directive WSD13-10*. The existing policy also includes information on the performance standards for other providers (e.g. public funded, providers who are exempt from BPPE).

- 3. Comment:** Several comments requested expanding the “performance exclusion” definition. One organization suggested that given the characteristics and economic conditions of rural and hard to serve populations with numerous barriers, unique challenges often affect the placement rate of the school regardless of the efforts being made by the institutions’ staff. Currently, accrediting agencies such as the Council for Occupational Education recognize that training providers may not be able to remove all the participant’s barriers to employment, make individuals accept an employment opportunity, and may not have control over a training participant deciding to continue postsecondary education as opposed to employment. As a result, accrediting agencies consider these situations and remove certain participants from the performance placement equation. The comments recommended updating or including a “neutral” option in the reporting requirements to account for factors outside of the training provider’s control, such as the following:

- Graduate completion that refuses employment. The number of graduate completers for who the institution has documented evidence that the completers failed to keep interview appointments, enrolled in the program of instruction strictly for personal use, or simply refused an employment offer in the field of instruction.
- Graduate completers unavailable for employment. The number of graduate completers documented to be unavailable for employment because of situations such as pregnancy, other serious health related issues, caring for ill family members, death, etc.
- Participants failing a pre-employment drug screening or students deciding during training that they would like to continue their postsecondary education.

Response: The BPPE reporting and operating definitions are included in state statute and cannot be expanded outside the legislative process.

- 4. Comment:** One organization suggested a one-time waiver for a one-time, non-yet-vetted program chosen by one individual, due to the time it takes for a new courses and schools to be approved by BPPE.

Response: The BPPE law and regulations requires that all private postsecondary providers that receive any public funds for a student enrolled in their school receive an Approval to Operate, with limited exceptions. The EDD or State Board does not have the authority to grant a one-time waiver to this requirement.

5. **Comment:** One response requested a change on page 3 to change the last of the first set of four bullets to read “Award recognized post-secondary credentials” instead of “Award credentials/certificates that are valued by the local/regional employer community”.

Response: The EDD has changed the bullet to read: “Award industry-recognized post-secondary credentials”. This is consistent with the request made in the comments, but also places emphasis on creating a skilled workforce to meet the needs of California’s employers. We believe that this also is consistent with the elements of the local plan described in WIOA Section 108(b).

6. **Comment:** One comment pointed out that it appeared that the draft directive required the local board to input information into CalJOBSSM for Training Providers who received a waiver and questioned why the waived group should have a special privilege.

Response: The directive has been changed to clarify responsibility for inputting the data into the CalJOBS system. It continues to be the responsibility of the training provider to input the data for their program(s) into CalJOBSSM, although in many cases they will be assisted by the local ETPL Coordinators.

7. **Comment:** Can waivers be used for BPPE exempt schools with less than qualifying performance?

Response: Yes, however, the affected school and program must have a publicly verifiable means for the local board and the state to monitor performance under any waiver granted under this policy. The intent of the waiver is to allow local boards the opportunity to expand the number of programs available for participants that have barriers to employment.

8. **Comment:** One organization pointed out that some schools have campuses located in many areas of the state and may face a situation where a program/course may be performing at or above the 70 percent “entered employment rate” in one LWIA, but may not be performing at or above the 70 percent “entered employment performance rate” in another LWIA; and that may impact the aggregate performance of the program/course, resulting in all sites being removed from the ETPL. Can a waiver be requested in this instance?

Response: Yes. The BPPE performance data is aggregated for all school sites and the performance of one site may result in all sites being removed from the list. In the instance where a site that has performed above 70 percent is removed from the list due to poor performance in other locations, the training provider should submit a waiver request to the local board that originally approved them for listing on the ETPL using documentation of their performance to justify the waiver. (EDD is researching the ability of the CalJOBSSM system to exclude specific schools/sites on the ETPL.)

- 9. Comment:** One comment pointed out that different LWIAs may submit waivers for the same schools and same courses and asked how this will be handled and who would be the responsible LWIA?

Response: The LWIA that originally approved the school/courses will be responsible for waiver approval and assisting the Training Provider in listing the approved courses on the ETPL. The state will be maintaining a list of all the programs that have been requested under this waiver process and the disposition of each request. In addition, the state will be monitoring them to ensure performance continues to improve. The list of programs will also be available in CalJOBSSM.

- 10. Comment:** One comment requested clarification on the length of time the waiver will take to review and approve. LWIA ETPL staff has 30 days to approve a course or subsequent eligibility and there is a concern that the CWIB and EDD review is completed prior to “lockdown date” that would prohibit approval entry.

Response: The CWIB and EDD will have up to thirty days to review waiver requests submitted by local boards. Currently there is no “lockdown date” associated with adding schools and courses to the ETPL. To ensure that the enrollment lockdown dates are not affected, LWIBs should not allow enrollments into any training provider that has been removed from the list until the waiver has been approved by the EDD.

- 11. Comment:** One comment asked if a waiver could be requested for subsequent eligibility. For example, if a school met the 70 percent “entered employment rate” performance standard for initial eligibility (1st year), but does not meet the “entered employment rate” performance standard for subsequent eligibility (2nd year), can a waiver be requested?

Response: At this time the policy does not allow for a waiver to the subsequent eligibility criteria. The waivers granted under this policy are for initial eligibility of programs that serve hard to serve populations with barriers to employment only.

However, a waiver for subsequent eligibility may be considered when the new ETPL Policy is revised.

12. Comment: Several comments raised a concern that the CalJOBSSM ETPL has become an open database and currently lacks structure and controls. Examples were provided of training providers that entered their performance data as instructed; however, LWIA ETPL staff from various areas of the state entered the system and altered what Providers had input. The originating LWIA remained displayed as the approving LWIA, but the date had been changed. Concerns were also raised regarding enrollment of individuals in programs/courses which were initially denied because of under-performance but were altered by other LWIAs and/or EDD staff. Finally, there was a concern that the initial approving LWIA will bear the fiscal responsibility for disallowed costs associated with students enrolling in courses that should have been removed from the list.

Response: To address this concern, the EDD has been working with Geographic Solutions to incorporate several programming changes to the ETPL Module and to better understand the permissions available in the ETPL module in CalJOBSSM. One of the changes requested by EDD will restrict access to the program data to the approving LWIA and the training providers. While these concerns are being addressed, EDD will work with LWIAs to resolve any questioned costs.

13. Comment: One comment questioned the process of having the CWIB (rather than EDD) carry out the administrative function of carrying out directives issued by the EDD, concerned that it will result in disjointed oversight and implementation of complex and integrated systems such as ETPL/CalJOBSSM systems. The comment includes a suggestion that the waiver form not be emailed to a single individual as staff can change. The comment recommended that EDD Directives should be implemented by EDD staff to minimize conflicting communication regarding the complex systems and policies for which local LWIAs are responsible for implementing.

Response: The State Board will review and approve waivers submitted under this policy and submit to EDD to carry out the administrative functions of the directive. A separate email account has been established for submittal of waiver requests.