

## WIOA NPRM Input

The Workforce Development Council of Seattle-King County (WDC) is a nonprofit workforce think-tank and grant-making organization whose mission is to support a strong economy and the ability of each person to achieve self-sufficiency. The WDC works throughout the community, bringing employers, jobseekers, youth, educators, labor groups and other nonprofits together to find—and fund—solutions to workforce gaps.

The WDC is pleased to submit the following comments regarding the Workforce Innovation and Opportunity Act (WIOA) Notice of Proposed Rulemaking (NPRM) RIN 1205-AB73 (Docket No. ETA-2015-0001), implementing Title I and Title III of WIOA; NPRM RIN 1205-AB74 (Docket No. ETA-2015-0002), “Joint Rule for Unified and Combined State Plans, Performance Accountability, and the One-Stop System Joint Provisions,” and NPRM RIN 1830-AA22 (Docket No. ED-2015-OCTAE-0003), implementing programs and activities authorized under Title II of WIOA.

The input below is based on a series of input convenings with over 100 attendees, including WDC board members and staff, local one-stop system staff and partners, and the broader community. The convenings presented a brief summary of WIOA and language provided in the NPRMs regarding areas that drew upon the expertise of attendees. The input gathered at the convenings was gathered, organized according to key themes, and analyzed to submit coordinated and comprehensive comment to the Departments.

The WDC strongly supports the vision and goals of WIOA, and looks forward to working with the Departments of Labor and Education — as well as other federal agencies responsible for administration of partner programs — to support the successful implementation of the law.

### Local Governance

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#### **§ 679.210(d) – What are the requirements for identifying a region?**

- The WDC supports RIN 1205-AB73 - 679.210(d), which spells out that “A single local area may not be split across two planning regions.” For purposes of capacity and the efficacy of regional efforts, we believe that this is an important provision and are glad that it is included in the NPRM.
- In RIN 1205-AB73 - “Subpart B – Workforce Innovation and Opportunity Act Local Governance (Workforce Development Areas)”, the WDC believes that the term “design and govern the system regionally” should be changed, as the system is to be governed by states and local areas, with governors and chief elected officials responsible for the outcomes.
- Regional structures may or may not come about as a result of the regional work done by local boards, but the idea of designing and governing the system regionally thereby creating another layer of bureaucracy that separates the federal law from the people who are served by its programs, is counter to the law itself which spells out regional work as a function of the local boards. Likewise, specific language that describes the “purpose of a region” should be changed to “purpose of regional work”.

## One-Stop System

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### **§ 678.700 - What are infrastructure costs?**

- Infrastructure costs should include common identifier funding, especially for marketing One-Stop locations that are outside of the standard One-Stop Center model (such as locations with customized or virtual access). This is an important component of making one-stops accessible and enabling community-based organizations to best leverage one-stop services and provide effective career and training services to populations facing barriers.
- Infrastructure costs should also include Information and Communication Technology costs that allow one-stop staff to provide more effective and efficient service and that expand the resources available to customers.
- Although Section 121(e)(4) identifies infrastructure costs as nonpersonnel costs, it is recommended that infrastructure costs should include administrative costs of operating one-stops.

### **§ 683.215(c) - What are administrative costs?**

- The WDC recommends a general description of administrative costs is better than a proposed list of cost. In order to allow local areas the flexibility to resolve issues that arrive later or are pertinent to a particular area, the WDC recommends that the Department provide examples for guidance rather than a limited list.

### **§ 678.900 - What is the common identifier to be used by each one-stop delivery system?**

- Identifier should specifically state “career” instead of “job”
- There is concern that the label “American Job Center” might be exclusive and give impression that only citizens can be served.

## Career Services

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### **Basic Skills Deficient Definition**

#### **§ 680.600 - What priority must be given to low-income adults and public assistance recipients and individuals who are basic skills deficient served with adult funds under title I?**

***[Definition provided in WIOA Section 3(5)(B)- not subject for comment at federal level- local board and governor can establish process to give priority to other individuals, so other comments will be considered at local level]***

- Basic skills deficient definition should include computer literacy skills as a skill “necessary to function on the job” based on employer demand.
- Process for identifying basic skills deficient should allow self-attestation and observation by One-Stop Staff.

- To assess abilities listed in second clause of definition, a standard tool for measuring is recommended that includes career-oriented employability skills or “soft-skills.”
- Ensure that anyone who meets this definition, whether or not they know if they are on an academic or career track, should be eligible for services.

## Career Pathways and Industry-Driven Training

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### **§680.300 – How are training services provided?**

- While local boards currently have the ability to use Individual Training Accounts to purchase slots in cohort style training programs, the WDC recommends that the DOL cite training services provided through cohorts as an evidence-based model for supporting successful training completion.

### **§680.330 – How can Individual Training Accounts, supportive services, and needs-related payments be used to support placing participating adults and dislocated workers into a registered apprenticeship program and support participants once they are in a registered apprenticeship program?**

- Individual Training Accounts should be tailored to be able to attend and complete Pre-Apprenticeship Training and to recognize their entry into a state approved apprenticeship program. The registration into a state approved program should be counted as an “OUTCOME” and support should continue while receiving apprenticeship training. The starting wage as a state approved apprentice should continue to be tracked as further training outcomes.
- Important that the completion of the pre-apprenticeship be counted as an initial completion and be counted in the performance calculation of post-secondary credentials. This gives the student the ability to enter an apprenticeship program. Often they will receive a preferred entry into the apprenticeship program because they completed the initial pre-apprenticeship class.

### **§680.920 - Are there limits on the amounts or duration of funds for supportive services?**

*Local boards may establish limits on the provision of supportive services ....to establish such limits, including a maximum amount of funding and maximum length of time for supportive services to be available to participants..*

- While the WDC appreciates the local flexibility to define amounts and duration of supportive services, the definition of support services and extended case management should include ongoing, extended services as participants proceed through training and employment – their complete career pathway, especially in the cases for individuals with barriers.

### **§680.930 - What are needs-related payments?**

- WIOA funding should be available for licensing, certification and employer testing. Training funds should be available for and eligible to cover all steps/aspects of the licensing process (testing, transcripts, etc).

### **§680.780 - Who is an “incumbent worker” for purposes of statewide and local employment and training activities?**

Language should be open to support local decisions based on industry need.

### **Eligibility**

- Incumbent workers should not be required to work at companies for certain duration of time as this would serve as a hindrance to employers trying to ramp up and train quickly. The Department’s suggestion of 6 months is in line with common thinking, and serves as a good benchmark, though there should be flexibility to include those who’ve served less than six months, if it is approved by the local board.
- Definition and eligibility should be aligned with Worker Retraining “vulnerable worker” criteria as defined by the [Washington State Board for Community and Technical Colleges](#).
  - The individual is employed in an occupation identified as “not in demand” (declining) on the region’s Demand-Decline List (<https://fortress.wa.gov/esd/wilma/wdclists/>);
  - The individual has not reached the “tipping point,” which is defined as one year of college credits (45 credits) plus any certificate or degree related to their college course work; and/or
  - In order to remain employed, the individual needs to obtain new skills. The worker (and, optionally, their employer) must attest that the minimum qualifications for the worker’s position have changed and that the employee is unable to meet the new skill standard without retraining.
- Consideration and prioritization should be made for those earning lower wages ([use self-sufficiency as standard](#)) and serving individuals with barriers.

### **Competitiveness:**

#### **Incumbent worker training should lead to:**

- Higher wages (not necessarily immediately after the training, but one year later as employees might not necessarily achieve this immediately)
  - Employees often move to different employers. So incumbent worker training funds (and performance) should be portable across employers.
- Avoiding a layoff, or
- Progress toward self-sufficiency.

## Performance

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### **§ 677.150**

#### **Defining Exit**

- The WDC recommends that exits be defined by an individual program-exit approach and not a common-exit across all core programs approach. Programs must be measured on the efficacy of their efforts as close to when the services are provided as possible, and an exit strategy across multiple programs would lead to certain delays in reporting on a program by program basis.

- The WDC supports studies of co-enrolled participants to find out which partnerships, strategies, and efforts are most effective. These studies and assessments should be outside of the performance measure system, but would provide insight as to how programs work together most effectively, and how often they work together on a state and local basis.

**§681.450- For how long must a local Workforce Innovation and Opportunity Act youth program serve a participant?**

- Need clarification on how local programs should determine when youth are “successfully prepared to enter post-secondary education and/or unsubsidized employment.”

**§ 677.155 - What are the primary indicators of performance under the Workforce Innovation and Opportunity Act?**

**§ 677.155(a) (1)**

- Self-Sufficiency (as measured by the <http://thecalculator.org/>) should be included as a performance metric.
- With the increased focus on serving individuals with barriers and priority of service populations, credentials should include those that must occur prior to and following employment and post-secondary education.

**Retention**

**§ 677.155(a) (1)(ii)**

- Retention measure definition needed for incumbent worker training (see Page 4 for further discussion on incumbent worker training).
- There is concern that this measure will not accurately reflect a change or advancement in occupation. The Departments should recommend ways of integrating occupational advancement into this or other measures.
- Youth: Planned short-term employment where a retention element isn’t expected (such as summer internships with return to school) should be considered as a positive outcome and should not be included in retention denominator.

**Credential Attainment**

**§ 677.155(a) (1)(iv)**

- Pre-apprenticeship and apprenticeship should be expressly called out as post-secondary credentials.
- Progress in an apprenticeship (such as yearly completion) should be also considered a positive outcome.

**Measurable Skills Gain**

**§ 677.155(a)(1)(v)**

- Measurable skill gains should align with [Student Achievement Initiative Definition](#) in order to concretely describe milestones and have feasible options of demonstrating achievements.
  - The categories of Achievement measures are:
    - Building towards college-level skills (basic skills gains, completing a precollege writing or math sequence)
    - First year retention (earning 15 then 30 college level credits)
    - Second year retention and becoming workforce or transfer ready (45 college credits)
    - Completing college-level math (passing math courses required for either technical or academic associate degrees)
    - Completions (degrees, certificates, apprenticeship training)
  - Other recommended ways of measuring skill gains:
    - Passing Grades
    - Literacy gains (per CASAS) for non-native speakers
    - Should be tied to the required skills of the occupation being pursued

### **Employer Engagement**

#### **§ 677.155(a) (1) (vi)**

- Measure employer satisfaction with local employer focused system. Include qualitative measure to allow employers to articulate what success looks like in their sector and region.
- Employer engagement should not include employee retention rates because performance of employees is out of WIOA control.
- As apprenticeship often includes multiple employers, measuring employee retention would be negatively impacted and might not accurately reflect an individual’s successful apprenticeship experience.
- Use tiers to measure employer engagement with concrete examples of engagement. This will allow for more meaningful relationships that fit each individual employer needs, which is especially important for small businesses.
  - For example, use tiers with examples of engagement such as those listed below:
    - **Gold:** Hires jobseekers from organization on a regular basis, participates in multiple events annually such as employer panels, hosting site visits, employer presentations, hiring events, mock interview events, etc., as well as making donations, and giving curriculum input while attending Technical Advisory Committee meetings.
    - **Silver:** Hires jobseekers from organization sporadically, participates in one or two events each year such as: employer panels, hosting site visits, employer presentations, hiring events, mock interview events, etc., donations and may attend some Technical Advisory Committee meetings.
    - **Bronze:** Uses organization to meet hiring needs, may attend one Technical Advisory Committee meeting or event each year.

**§ 677.190(c)** - When are sanctions applied for failure to achieve adjusted levels of performance?

The Departments are seeking comments on whether to use a weighted average or a straight average for each overall indicator score.

- Weighting performance by program would enable a more equitable distribution of performance.
- The focus of each program should affect the weight of each indicator to determine the overall indicator score. For overall indicator scores, 100 percent should be divided amongst the partners for each indicator, with individual percentage correlating with the amount of weight given to each partner’s effect on the overall indicator score.
- The WDC recommends a draft of this weighted average be distributed for public comment before it is finalized, and that the percentage “weights” be reviewed at the end of every program year and adjusted to ensure that each are measured to provide the most robust story of the effectiveness of the programs on each overall indicator score.

## Youth Eligibility

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### **§681.230 What does “school” refer to in the “not attending or attending any school” in the out-of-school and in-school definitions?**

The Department clarifies that the term school as it relates to WIOA out-of-school eligibility shall be defined by state law for both secondary and postsecondary institutions. The proposed rule clarifies that youth attending an adult education program funded by WIOA Title II, YouthBuild, or Job Corps, can be considered OSY for the purposes of Title I of WIOA youth program eligibility, as these programs are not considered schools. The WDC agrees with the Department’s assessment and believes this is the type of cross-eligibility that will facilitate co-enrollment across programs and will also support youth who do not have secondary school credentials and have dropped out of high school to be in enrolled in comprehensive interventions. However, there is concern that youth who are participating in adult education and high school equivalency programs that are not funded through Title II WIOA and other interventions similar to YouthBuild or Job Corps funded by other public and private sources may be deemed ineligible for services as an OSY under Title I WIOA.

The promise of WIOA is that local program services can be enriched by combining service strategies and leveraging resources. Thus, defining “out-of-school” in a way that renders some youth have dropped out of high school ineligible for Title I WIOA youth services is counter-intuitive. [Adult education services are funded by a patchwork of revenue sources—including local, state, and federal governments and tuition or fee payments by students.](#) According to a survey conducted by CLASP and the National Council for State Directors of Adult Education (NCSDAE) of state directors of adult education, *56 percent of adult education funding comes from three nonfederal sources: 45 percent of total funding comes from the state; 10 percent comes from local sources, which include programs, school districts, and institutions and local levies; and 1 percent comes from tuition.*<sup>1</sup> Thus, many youth may attend high school equivalency programs that are funded outside of the WIOA Title II adult education system.

The legislative intent in WIOA is to provide out-of-school youth with more intensive and integrated services. Thus, a young person that is accessing a high school equivalency program that is funded outside of WIOA would be unduly penalized, since he/she would be deemed ineligible for services as an

out-of-school youth. This becomes extremely critical for youth older than the age of 21, who if deemed an in-school youth for the purposes of Title I of WIOA youth program eligibility, would not be allowed to be served through the Title I WIOA youth program. The following recommendations are intended to support clarity in determining an out-of-school youth's eligibility status and not to open loopholes for serving "in-school" youth within the 75 percent expenditure requirement for out-of-school youth.

**Recommendations:**

- Youth without a secondary credential and that are attending a high school equivalency program or a re-engagement program, regardless of how that program is funded, should be deemed eligible for Title I youth services and be considered an out-of-school youth. Eligibility determination should be based on the educational status of the youth and the function of the entity providing the adult education service.
- The WDC encourages the Departments to further define what "attending" means in the context of determining eligibility. There could be numerous applications and interpretations, especially in considering the older youth population. Does taking a single course at a community college make you ineligible for services while you are attending? If enrolled in a non-credit bearing or continuing education course given by a community college are you ineligible for youth services.
- Incarcerated youth who are attending school while incarcerated should be considered Out-of-School Youth.
- Allow "grace period" for re-entering school to alleviate reengagement as a penalty regarding OSY eligibility. Example – youth initially entering school can be considered out-of-school for the first 30 days.
- Provide clarification regarding tribal and undocumented youth eligibility.

**§ 681.260 – How does the Department define "high poverty area" for the purposes of the special rule for low-income youth in Workforce Innovation and Opportunity Act?**

WIOA contains a new provision that allows for youth living in a high-poverty area to automatically meet the low-income criterion that is one of the eligibility criteria for ISY and for some OSY.

- In King County, large pockets of poverty exist, but none of the Census Tracts meet the 30% criteria. It is recommended that eligibility be based upon a smaller area, such as zip code.
- Additionally, to this criteria the WDC proposes in the low-income criterion for youth activities funding and services, the Departments' should encourage the use a variety of proxies in which a local area can identify any one of the following methods within their jurisdiction:
  - living in public or subsidized housing;
  - living in a neighborhood or community that is less than or equal to 50% of the Area Median Income;
  - living in a household that is eligible to receive free or reduced priced lunch program (FRPL) {the Department of Education defines high-poverty schools are those where 76–100 % of students are eligible for FRPL}

### **§681.310 Must youth participants enroll to participate in the youth program?**

While WIOA no longer requires Out-of-School youth with a defined barrier improvements over current law, it does not alleviate all of the challenges related to eligibility certification and documentation. Out-of-school youth would still have to produce documentation to demonstrate their “risk status”.

Eligibility certification is not addressed in the new law. In prior years, guidance issued by the Department of Labor on data accuracy and verification has been utilized by state and local areas to establish acceptable criteria for certification - which usually requires documentation from the school system, justice system, welfare system, or administrative records. While self-attestation is allowed for some categories, in many cases, it is made clear that it is an option of last resort after others have been exhausted. Many states and locals, out of fear of disallowed cost, or other administrative findings, have embedded these requirements as part of up-front eligibility verification. Requiring youth in the most precarious situations to navigate major bureaucracies to produce documentation of their risk status before any service is rendered is a major deterrent to serving those most in need.

- It is recommended that the Department of Labor should clarify that the “collection of information” can be supported by self-attestation for upfront eligibility determination in particular for youth in high risk categories, with the exception of “Youth Who Needs Additional Assistance”, which the Department is proposing that states and/or local areas establish definitions and eligibility requirements in Section 681.300.
- Further, the WDC recommends the Department should make *explicit* that for out-of-school youth, who do not have a secondary credential; are subject to the juvenile or adult justice system; are homeless and/or runaway youth; or are pregnant or parenting that self-attestation is allowable, preferred and services can begin immediately.
- Lastly, the WDC encourages the Department to make clear that the requirements for data quality and validation and the requirements for eligibility determination are separate processes and states should not unduly impose those data validation requirements on the upfront eligibility determination process.

## Youth Program Elements

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### **§ 681.500 – What is financial literacy?**

- Financial literacy definition should include high prioritization of this element and identify basic components, which should encompass financial capability. Youth will be best served under this element by learning financial literacy through practice rather than instruction.
- Requested clarification on the difference between personal financial literacy and entrepreneurial financial literacy and to which this definition refers.

### **§681.550 – Are Individual Training Accounts permitted for youth participants?**

- Program element #4 occupational skills training should not be limited to in-demand industries and post-secondary credential training. This is too high a bar for out-of-school youth to reach.

### **§ 681.560 – What is entrepreneurial skills training and how is it taught?**

- The Department should recommend experiential learning of entrepreneurial skills as this way of learning entrepreneurship and leadership is a more effective model.
- Entrepreneurial training should include:
  - Education assessment and pathway identification;
  - Leadership development activities; and
  - Soft skills training based on industry demand.

#### **§ 681.580 – What are follow-up services for youth?**

- Follow-up service requirements should also include recognition that once placed, youth want independence from programs. The level of intensity for follow-up services should be flexible to allow for decreasing intensity of follow-up contact 6-12 months following exit.
- Texting and social media contact should be included as acceptable forms of engagement in follow-up services.

#### **§ 681.600(b) – What are work experiences?**

- 681.600(b) says “Work experiences must include academic and occupational education. The words “must” and “and” are concerning to workers in the field.
- The WDC received feedback that there are plenty of youth whose primary goal is to get off the street or feed their families, and in their situation they will focus on employment first. These are the most at-risk youth, and there should be an editing of this sentence to something akin to “work experience must not deter from a participant’s academic and occupational education goals. Ensuring all youth receive academic and occupational education is at the forefront of the goals of WIOA.”
- Also, local boards should be allowed to utilize leveraged funding to meet the 20% work-based learning requirement, such as TANF and Career Pathways Trust money. Staff engaged in developing and implementing such strategies should also be included in the 20% expenditure requirement, as well as support services. Clarity should be made ensuring that youth contractors providing career planning services are authorized to disburse support services.

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<sup>i</sup> <http://www.clasp.org/resources-and-publications/files/Sinking-or-Swimming-State-Adult-Education-Tuition-and-Financing-Policies.pdf>