

Unpacking Proposed WIOA Regulations

Frequently Asked Questions

May 2015

State and Local Boards

If a WDB wanted to utilize the consortium (minimum of 3 mandatory partners) option for the 1 stop operator, how does the fiscal agent procure mandatory partners? It seems to be a bit of an oxymoron: procurement = open and fair competition; mandatory partners = those identified in the Act.

WIOA eliminated the option under WIA that allowed for the designation or certification of one-stop operators by agreement between the local board and a consortium of three or more one-stop partners. The proposed rule clarifies that one-stop operators must be selected through a competitive process at least once every four years, with limited exceptions. The proposed rules indicate that one-stop operators may be single entities or a consortium of entities; if the consortium of entities includes one-stop partners, it must include three or more one-stop partners.

The draft rules propose that the minimum role of a one-stop operator is coordination across one-stop partners and service providers – there is no requirement that the one-stop operator provide direct services. One-stop operators may be service providers – and can in fact be the primary service provider within a one-stop - but there must be appropriate firewalls in place to ensure that the one-stop operator is not conducting oversight of itself as a service provider. Local boards must clearly articulate the responsibilities of the one-stop operator in the competition. Mandatory one-stop partners are still required to provide access to programs and services through the one-stop delivery system, including appropriate career services – the competitive procurement rules relating to the one-stop operator function do not affect these requirements.

One slide stated that State WDBs must be in line with WIOA regulations by 7/1/15. Is there a date by which Local WDB membership must be in line with the new regulations?

There is no formal deadline for local boards. States must develop criteria for the appointment of local boards by not later than July 1, 2015, and DOL has indicated in recent guidance that local elected officials are “strongly encouraged” to appoint WIOA-compliant LWDBs by September 2015.

What number of small businesses must be on local boards?



State boards must have at least one small business representative, while local boards must have at least two small business reps. DOL recently released [Training and Employment Guidance Letter 27-14](#) which provides additional clarification on board membership requirements and deadlines.

What is role of the community college with local boards? And is it a required partnership?

There are several ways in which community colleges can be connected to LWDBs. First, local boards are required to include at least one representative from an institution of higher education providing workforce investment activities, which may include community colleges. Community colleges may be on the state eligible training provider list (ETPL) and receive Title I training funds. In addition, the law requires that local boards partner with institutions of higher education or other training providers in the development, convening, and implementation of industry or sector partnerships, and further requires local boards to work with representatives of secondary and postsecondary educational programs to develop and implement career pathways in the local area.

Can the Governor "grandfather" existing regions and boards and state board?

Yes, if they meet certain conditions. A state board that has a different membership than specified in WIOA may be grandfathered in if it existed on the day WIA was enacted in 1998 and is substantially similar in membership. Such an alternate entity must make provision for participation by stakeholders not represented on the entity but whose representation would otherwise be required under WIOA. A Workforce Development Area must be grandfathered in if requested by the chief local elected official and the local board, and the area performed successfully for the previous two years with fiscal integrity. In reference to grandfathering in local boards, at the end of Sec. 107 WIOA indicates states may use alternative local entities that existed the day before the enactment of WIOA. The NPRMs, however, do not appear to explicitly address this option.

Does the region requirement preclude the current exemptions as single-board states?

No. States may grandfather in single-boards.

Do the regulations provide any guidance on nominating authority (beyond the 2 designated Labor seats) for the 20% workforce category?

Proposed rule 679.110 generally describes the membership requirements for state workforce development boards, which among other things requires that the Governor establish by-laws for the SWDB that include the nomination process used for state board members. There is similar language under proposed 679.310 that requires the chief locally-elected official to establish by-laws that include the CLEO's nominating process for local WDB members. Section 679.320(g) (starts at the top of p. 592 of the [DOL NPRM](#)) requires the CLEO to establish a formal



nomination process, including specific nomination requirements relating to business, labor, and adult education representatives.

The One-Stop Delivery System

Will agencies currently running One Stops need go through a competitive procurement to continue operating the One Stop?

The full requirements for the competitive process are set out at sec. 678.605 of the joint DOL-ED NPRM, and they clarify that local boards must select the one-stop operator through a competitive process. Nothing prohibits current operators from competing to be one-stop operators, though the local board must ensure there are clear firewalls to prevent current operators from involvement in the development and running of the competition.

DOL also clarifies that nothing in the law or regulations prevents a state or local workforce agency from competing to be the one-stop operator, but it will be incumbent on the local board to develop conflict of interest policies and firewalls that ensure that the state or local agency is not engaged in the development and running of the competition, and additional firewalls to ensure that if the state or local agency is selected as the one-stop operator, then there is oversight and management from a source other than the agency.

In the section on the one-stop operator role, there is a line that suggests an operator "may not...select or terminate one-stop operators, career services, and youth providers." Does that mean that a one-stop operator can't enter into a contract with a service provider to staff and manage a one-stop?

We would interpret the law and the draft NPRMs to indicate that only the local board may select one-stop operators. The one-stop operator may also be a service provider, so long as the one-stop operator is not responsible for providing oversight of itself as a service provider. The local board must determine which Title I career services are best provided by the one-stop operator and which must be provided by other service providers.

Who are the required program partners at the centers? You mentioned the six core but aren't others mandated?

The required partners are listed at WIOA sec. 121(b) and are restated in proposed sec. 678.400 of the draft DOL regulations. The required partners under WIOA are generally consistent with the WIA, except that TANF is now a required partner unless the governor of the state makes an affirmative determination to opt TANF out of the one-stop system in the state or in specific local areas. The TANF opt out process is described in proposed DOL section 678.405.

What services must be available on site to be considered an "affiliate" site for Job Centers?

The primary provision relating to affiliate sites is sec.678.310 in the joint DOL-ED NPRM. The regulations state "an affiliated site, or affiliate one-stop center, is a site that makes available to



jobseeker and employer customers one or more of the one-stop partners' programs, services, and activities. An affiliated site does not need to provide access to every required one-stop partner program." There are no specific service requirements for affiliate sites outlined in the draft regulations. The NPRMs do reaffirm that standalone Wagner-Peyser offices are prohibited, so a Wagner-Peyser office cannot serve as an affiliated site without at least one other required partner.

Would it be fair to say that we don't have to enroll a client until he has a signed employment plan worked out with a staff person and the client?

Individual employment plans are identified as an "individualized" career service, but there is no federal requirement for a signed individual employment plan prior to participation in WIOA-funded services.

For priority of service to adults with barriers, does WIOA define eligibility or do local/state jurisdictions set these requirements?

The priority of service requirement for adult services applies to three specific categories: recipients of public assistance, other low-income individuals, and individuals who are basic skills deficient. Basic skills deficient is a new term and is defined at WIOA section 3(5)(B) and refers to individuals who are "unable to compute or solve problems, or read, write, or speak English, at a level necessary to function on the job, in the individual's family, or in society."

States and local areas must establish the criteria by which one-stop operators apply the priority of service. State and local areas have the discretion to establish criteria that extend the priority of service to other populations so long as these do not conflict with the separate priority of service requirements for veterans under proposed section 680.650.

Does the no sequence of core and intensive services before training under WIOA apply to both Youth and Adult programs?

The sequence of services requirements under WIA generally applied to adults and dislocated workers receiving core and intensive services through the one-stop system; participants in WIA youth programs were not generally understood to be subject to sequence of services requirements, since there were no tiers of core or intensive services under the youth program. WIOA does modify and expand the required elements that must be made available to youth participants; the draft regulations clarify that local program have the discretion to determine what services youth participants receive based on their objective assessments and the individual service strategy for each youth.

You mentioned that there are some circumstances allowing for sole source providers to competitively bid, where do we find that information in the regulations? How should states consider transparent selection processes to allow this option where applicable?



The general requirements for sole-source procurement are set forth at 678.605(d)(3) and 678.610 of the joint [DOL-ED NPRM](#) (DOL section starts at p. 272). In general, sole-source procurement is permitted only where i) analysis of market conditions and other factors lead to a determination that sole-source procurement is necessary because only one entity can serve as an operator or there is some “unusual and compelling urgency” that will not allow for competition; or ii) the results of a competition were inadequate. If a determination is made to pursue sole-source procurement, written documentation of the determination and process must be maintained, and appropriate conflict of interest policies must be developed. The agencies make clear that sole source awards are allowable only in very limited circumstances, and that concerns about the time required to carry out a competition will not meet the “urgent and compelling” threshold described in the draft regulations.

Will just the "basic services" need to be procured? Will the "individualized" services need to be procured too?

WIOA includes a new requirement that local boards maximize consumer choice with respect to career services, but draws no distinction between different types of career services in the application of the consumer choice requirements. While the draft regulations do propose differentiating career services into basic and individualized services for purposes of the new priority of service requirements, the proposed section 679.380 covering consumer choice requirements appears to apply to all career services, regardless of whether they are basic or individualized career services. Subsection 679.380(b) indicates that the local board has responsibility for identifying which career services are best performed by the one-stop operator and which require contracting with another service provider. The local board must also identify a “wide array” of potential career service providers, and award contracts where appropriate to ensure sufficient access to services for individuals with disabilities, and access to adult education and literacy activities, but the ultimate decision on who provides career services is left to the local board. The draft regulations indicate that there is no requirement to provide consumer choice with respect to each career service.

Must every mandatory one-stop partner contribute funding to support the local workforce development board and one-stop operations?

There is no requirement under WIOA that mandatory one-stop partners provide funding to support operations of the local workforce development board. Proposed section 678.700(c) clarifies that each entity that carries out a program or activities in a local one-stop center must use a portion of the funds available for such program or activities to maintain the one-stop delivery system, including payment of infrastructure costs. Infrastructure costs may be funded through a local funding mechanism (as described in proposed section 678.715) under which the local board, chief elected officials, and one-stop partners reach agreement on the contributions required to support the one-stop delivery system in the local area. In circumstances where local consensus is not reached on methods to sufficiently fund the costs of the one-stop system, the local board must notify the state, and the state must then administer funding through a state one-stop funding mechanism (as described in section 678.730) established by the governor. The



governor is required to develop and issue guidance relating to one-stop infrastructure funding, including guidelines for state-administered one-stop programs regarding respective contributions to the one-stop system, guidance for local areas to use in determining equitable and stable methods for funding one-stop infrastructure costs, appropriate roles of one-stop partners in identifying infrastructure costs, and timelines for triggering the use of the state one-stop funding mechanism.

Funding

Will there be more funding or less for Title I adults and dislocated workers for skills training?

WIOA did set authorized funding levels for a number of programs, including authorized funding levels through Fiscal Year 2020 for the WIOA Title I formula adult, dislocated worker, and youth programs. However, actual funding levels are set by Congress through the appropriations process, and appropriators are not required to set funding at the authorized levels. For FY 2015, Congress appropriated funding for the WIOA Title I formula programs that was slightly above FY 2014 levels but below the authorized levels established in statute. DOL has just released [Training and Employment Guidance Letter \(TEGL\) 29-14](#) which outlines the Title I formula allotments to states for Program Year 2015.

Employer Engagement

Will employers who participate earn any incentives? Could this be considered?

WIOA provides a range of options to support work-based training that can include subsidizing employer costs, including on-the-job training, customized training, incumbent worker training, and registered apprenticeship.

For OJT, WIOA authorizes local boards to enter into contracts with public or private sector employers to cover up to 75 percent of the wage rate relating to the extraordinary costs of training and supervision. OJT contracts are generally limited to the amount of time necessary for the participant to become proficient in the occupation for which training is provided. OJT contracts may be used to support the on-the-job training components of a registered apprenticeship program.

Local boards can also pay for customized training, which is defined as training that is designed to meet the specific needs of an employer (or group of employers), is conducted with a commitment on the part of the employer to employ the participant upon completion of training, and for which the employer pays a “significant share” of the costs of training. Significant share is not defined in the regulations.

Incumbent worker training is training designed to meet the special requirements of an employer (including a group of employers) to retain a skilled workforce or avert the need to lay off employees by assisting the workers in obtaining the skills necessary to retain employment,



and conducted with a commitment by the employer to retain or avert the layoffs of the incumbent worker(s) trained. DOL is seeking input from the public on incumbent worker eligibility.

WIOA places significant emphasis on increased access to registered apprenticeship, including allowing registered apprenticeship programs to automatically qualify for the state eligible training provider list and clarifying that both OJT funds and Individual Training Accounts may be used to support components of RA. WIOA also expands the availability of pre-apprenticeship for both youth and adult jobseekers.

The priority of service for veterans is still the primary priority and it applies to all programs (Adult, Dislocated Workers, and Youth), correct?

The priority of service requirements for veterans has been retained in WIOA, and proposed section 652.100 clarifies that veterans receive priority of service for all DOL-funded programs.

Youth Services

In TEGL 23-14, it references that work experience must have as a component academic and occupational education. Can you provide an expanded explanation of what this means

The statute and regulations do not provide much additional guidance on this aspect of work based learning. Proposed sec. 681.600 clarifies that “work experiences are a planned, structured learning experience that takes place in a workplace for a limited period of time,” and that “[w]ork experiences provide the youth participant with opportunities for career exploration and skill development,” but otherwise there is limited instruction as to how providers are expected to meet this requirement.

Does the 20% work experience requirement allow expenditures for trainings or classes?

As noted above, the NPRMs clarify that work experiences are a planned, structured learning experience that takes place in a workplace for a limited period of time. While there is a requirement that work experience include academic and occupational education, it seems likely that standalone training or classes that are not directly linked to the work experience would not be considered an eligible expense.

Are the program framework requirements relating to youth services follow-up the same as the program elements requirements relating to follow up services?

Proposed section 681.400(b) clarifies that the competitive procurement requirements for youth services do not apply to framework elements, including follow-up services, when the local board determines that the grant recipient or fiscal agent is better positioned to provide those services. Proposed section 681.580 defines follow-up services more generally, and indicates that all participants must receive some form of follow-up services for at least 12 months, which would seem to indicate that there is no separate requirement to competitively bid follow-up



services if those are assigned to the grant recipient/fiscal agent as a program framework element.

State and Local Planning

Is the regional planning approach new?

Under WIA, states could require local areas to engage in regional planning, but it was not mandatory that states do so. Under WIOA section 106, states must designate regions (which can be comprised of a single local area or a combination of local areas), and the local boards within that region must develop and submit to the state a regional plan that includes both regional planning elements and the local plans for each local area.

In regard to coordinating regional plans with local plans - are the regional plans to be determined first, or are the local plans to be created and integrated into the regional plan?

It would make sense for the local and regional plans to be developed at the same time, since their content should inform one another. The local plans will have to be completed and attached to the regional plan before the regional plan may be submitted to the state.

Does the Governor have the authority to split a local area meeting initial designation across two different regions?

The general requirements for designation of regions and local areas may be found at proposed sections 679.200 through 679.290; the [DOL NPRM](#) indicates at page 53 that local areas may not be split across regions.

Eligible Training Providers (ETPs)

What will be the role of NPOs and CBOs as eligible providers?

Non-profit and community-based organizations are still eligible to be placed on the state eligible training provider list (ETPL). Governors have the option of establishing a transition period and extending current ETPs – those that were on the ETPL as of July 21, 2014 – to December 31, 2015 or an earlier date set by the governor. All new providers must submit applications as part of an initial eligibility process to be established by the governor; the state must also establish continued eligibility requirements for both new and current providers. DOL in the NPRM encourages states to establish minimum performance standards for ETPs that align with the performance accountability measures under sec. 116 of WIOA, specifically those relating to employment, earnings, and credential attainment.

It's worth noting that WIOA includes a number of exceptions to the general rule that training services be procured through the use of ITAs – it retains language from WIA authorizing the use of contracts in lieu of ITAs for “a training services program of demonstrated effectiveness offered in the local area by a community-based organization or another private organization to serve individuals with barriers to employment,” and adds a new exception authorizing a



“contract to an institution of higher education or other eligible provider of training services in order to facilitate the training of multiple individuals in in-demand industry sectors or occupations,” so long as the contract does not conflict with consumer choice requirements.

Will ETPLs still be defined/maintained at the local WDA level, or at state level?

Responsibility for defining and maintaining the ETPL is assigned to the Governor who may designate an agency or another entity to assist him or her. Local areas may add criteria or set higher criteria to those required by the Governor.

What is the transition time for ETP's to provide the student data?

The new ETP requirements go into effect In July, 2015. Governors may grandfather in providers who were eligible under WIA through December 31, 2015. Governors and their designated agency will issue specific procedures and timelines for ETPs to provide student information, such as when and how ETPs should submit student data for UI matching in order to measure employment and earnings of former students.

Do community colleges need to be on ETPL?

Community colleges need to be on the ETPL if they want to serve students funded by WIOA Title I.

Are you using the term "program of study" because the only training providers are those that are part of "programs of study" under CTE?

No. ETP programs do not need to be part of a program of study under Perkins or Career and Technical Education. Examples of a program of study for the purpose of ETPs are the welding program at a community college, or the nursing assistant program at a proprietary school. It is a sequence of courses at an institution that prepares an individual for a vocational field.

So did I understand correctly that Registered Apprenticeship programs will not need to report on the new performance measures at all?

Correct. The performance of apprenticeship programs does not need to be reported. Apprenticeship programs may voluntarily choose to provide performance information.

For local incumbent worker training (IWT) with adult funds, does the trainee have to be making a sustainable wage in order to be eligible for the training? Can you tell me your perspective for IWT on Leadership or Supervisory Training?

The draft regulations would only require that an incumbent worker be employed, meet the FLSA requirements for an employer-employee relationship, and have an established employment relationship with the employer for at least six months (DOL is specifically seeking comments on the minimum length of employment requirement). Incumbent workers would not



necessarily need to meet the general eligibility requirements for Adult and Dislocated Worker programs. States and local areas are free to establish additional eligibility criteria.

With respect to the second question (regarding leadership and supervisory training) – there’s nothing in the regulations that would prohibit this kind of training, and the department has expressed an interest in shaping the regulations and guidance in such a way as to encourage career advancement for front-line workers. One of the requirements under the law is that incumbent worker training must increase the “competitiveness” of the employer and employee, but that term has not yet been defined – DOL is actively seeking comments on the definition – so it may be that the department will elect to define competitiveness in a way that would discourage training that did not support career advancement or layoff aversion for the worker.

Are core partner programs automatically on the eligible training provider list?

It may be helpful to clarify that the eligible training provider list is the list of providers and programs in a state that have been determined eligible to receive Title I-B adult or dislocated worker funds for training services. Eligible entities may include: 1) institutions of higher education that provide a program which leads to a recognized post-secondary credential; (2) Registered apprenticeship programs; (3) Other public or private providers of a program of training services, which may include joint labor-management organizations and eligible providers of adult education and literacy activities under title II (if such activities are provided in combination with occupational skills training; and (4) local boards (under certain conditions). The requirements for eligible training providers are generally laid out in Part 680, subpart D of the draft regulations.

For all eligible entities other than registered apprenticeship programs, in order to be included on the ETPL, the eligible entity must meet eligibility criteria established by the state and by local boards, and must submit program and performance information as required by the state and local boards. Programs that are receiving funding through another WIOA core program (such as Title II) would not automatically be placed on the eligible training provider list.

Statewide Activities

Is there anything new in the NPRM that limits or expands the uses/purposes of the statewide set-aside?

WIOA maintains the statutory limit of 15 percent of formula Adult, Dislocated Worker, and Youth state allotments, and maintains the flexibility to use adult, dislocated worker, and youth funds interchangeably to support required and allowable statewide activities. WIOA did add several required and allowable state activities to the activities under WIA, including new requirements that states use funds to provide assistance to state agencies, local areas, and other entities to support regional planning, development of industry or sector partnerships, and other activities. The full list of required and allowable statewide activities may be found at proposed sections 682.200 and 682.210, respectively.



Primary Indicators of Performance

Why would customer satisfaction NOT be considered as an accountability measure?

WIOA specifies the metrics that the Departments are to use as accountability indicators (metrics for which targets will be negotiated and states will be held accountable for meeting the targets). Customer satisfaction is not one of these. States, however, may add additional accountability indicators, and the Departments may specify additional data required for informational purpose, such as data on customer satisfaction.

Please define the difference between Program scores and Indicator scores

An Overall Program Score is a program's average performance across the primary indicators of performance. An Overall Indicator Score is the average performance of the 6 core programs on a single primary indicator of performance.

Can you review the Performance & Accountability for employment?

There are two primary indicators of performance for employment: 1) the percentage of program participants who are in unsubsidized employment during the second quarter after exit from the program; and 2) the percentage of program participants who are in unsubsidized employment during the fourth quarter after exit from the program.

When you say that the indicator on employment in 2nd q after exit and 4 q after exit is not a measure of employment retention, what do you mean? not job retention?

An employment retention measure would be: Among those employed during the 2nd quarter after exit, what percent are employed during the 4th quarter after exit. Instead, the measure in WIOA is the percentage employed in the 4th quarter after exit among all exiters, not just among those employed in the 2nd quarter after exit. It is a measure of the employment rate rather than the employment retention rate.

The indicators tracking employment 2 and 4 quarters out seem to focus on retention and median salary. How should this data be modified to include advancement along career pathways?

The accountability indicators will measure participants' median earnings during the 2nd quarter after exit, their employment rate during the 2nd quarter after exit, and their employment rate during the 4th quarter after exit. These indicators were based on analysis of longitudinal data from multiple states for multiple programs that found them to be good indicators of longer-term employment and earnings outcomes for participants. There is also an indicator of skill gains among those enrolled in education or training, which may be considered to be an interim indicator of advancement. Governors may add additional indicators if they so choose or require additional data for information purposes.



What will the standards be for youth who are placed into post-secondary education as opposed to directly into a job? Will the 2nd and 4th quarter retention goal be that they are still enrolled in their post-secondary school placement?

For the youth program under title I of WIOA, the first two indicators are: (1) Percentage of participants who are in education or training activities, or in unsubsidized employment, during the second quarter after exit from the program; and (2) Percentage of participants in education or training activities, or in unsubsidized employment, during the fourth quarter after exit from the program. These are not “retention” indicators. They are not measures of retaining postsecondary enrollment or employment from one time period to another. Either post-secondary enrollment or employment counts during the second quarter after exit. Either post-secondary enrollment or employment counts during the 4th quarter after exit.

What do the regulations say about the public reporting of the performance measures? Will the performance measures be reported out by program or is for the WIOA as a whole?

The performance indicators will be reported for each of the 6 programs in WIOA as well as for WIOA as a whole.

Will additional programs in a combined plan be subject to same performance measures as core programs?

Additional programs remain subject to the performance measures in their own authorizing statute. Beyond that, states will have some discretion. In some cases, other statutes, such as Perkins, explicitly authorize states to add performance measures and the Department of Education negotiates the definition of measures with the states. In such cases, states may be able to use at least some of the WIOA measures to fulfill the federal requirements for another program. In any event, states may use the WIOA measures to measure for themselves the performance of additional programs in order to have consistent measures across programs for the state’s own purposes, even if they do not suffice for federal reporting requirements for other programs.

Sanctions

Fiscal sanction, as written in the regs, is specific to state performance failure (among other categories) and not local performance failure. Is this not a change from WIA were local areas can be fiscally sanctioned for 2 year consecutive performance failure? If so, will states be allowed/able to provide technical advisory allowing them to fiscally sanction a local area under WIOA?

The NPRMs indicate that if a local area fails to perform the state must provide technical assistance, and if failure occurs for three consecutive years, the Governor must: (1) Require the appointment and certification of a new local board, (2) Prohibit the use of eligible providers and one-stop partners that have been identified as achieving poor levels of performance; or (3) Take



such “other significant actions” as the Governor determines are appropriate. The NPRMs do not define these “other significant actions”.

Partner Programs

Have federal departments developed guidance for TANF as a required partner, including as part of the combined plan?

No. The Department of Health and Human Services has not issued guidance for TANF as a partner program.

Who will ensure that there is collaboration among different partnering agencies? How will it be guided?

There are multiple levels of responsibility for collaboration among the partnering agencies. The federal agencies are responsible for cross-agency collaboration in establishing rules and guidance, such as for combined plans. The Governors and State Boards are responsible for collaboration in the development of state plans and the implementation of state-wide strategies such as sector partnerships and career pathways. The local boards are responsible for collaboration in the development of local plans and the implementation of cross-program strategies, again such as sector partnerships and career pathways. One-Stop Operators are responsible for partner collaboration in the provision of direct services.

Wage Records

Will there still be a 6 - 9 month lag for employment data?

Yes. The WIOA regulations do not mandate any change in the collection of UI wage data, so it will still take time for state agencies to collect, process, and make available the quarterly wage information for performance reporting. The regulations explain that under proposed § 652.302(b), DOL will work to continuously improve available labor market information, including “improved processes and systems for the collection of and reporting of wage records.” (p. 448 of DOL regulation) So perhaps timeliness could be addressed sometime in the future.

Must use UI wage records? What about follow-up survey?

The WIOA statute has language in Sec. 116(i)(2) that was in the previous WIA law, which requires the use of UI wage records to report on program performance. The WIOA regulations address this requirement in § 677.175, which authorizes programs to collect SSNs and other information necessary to use wage records for performance reporting (as long as this collection is allowed by state law). The statute and regulations are clear that core programs — Title I adult/dislocated worker/youth formula, Title II adult education, Wagner-Peyser, Vocational Rehabilitation — must use UI wage records to report on the performance indicators.



Under WIA, the Department of Labor issued [guidance](#) clarifying this requirement and allowing use of surveys and other supplemental sources of data only when wage records did not include some participants, like those who are self-employed. The Departments could later issue similar WIOA guidance, but it will align with statutory/regulatory requirements and mandate UI wage records as the primary source for performance reporting.

As I understand it, Attorneys General in some states have ruled that education programs may not collect SSNs. This interpretation complicates the data matching. Any suggestions?

The lack of SSNs is mostly a problem when attempting to link with K-12 records, though some colleges don't collect SSNs either. Data matching without SSNs is a challenge. Even when SSNs are available, many states also use additional identifying information, like name and date of birth, to improve the match accuracy. Some states have experimented with matching based only on this other identifying information and/or or bringing in extra data sources like Department of Motor Vehicle records for match verification. States report varying degrees of success with these methods. The U.S. Department of Education put out a nice [fact sheet](#) on this topic with a case study of linkages in Idaho. Workforce Data Quality Campaign is currently working with some of our partners to better understand the feasibility of linking data without SSNs.

Are wage records still to be matched by social security number? Is there an alternative?

See answer above.

Question on sharing of unit wage data: the NPRM suggests that labor can share unit wage data with an education agency so that wages can be matched to student records. If labor does the wage matching (under one of the FERPA exceptions), can unit level data then be disclosed back to colleges?

The WIOA regulations do a couple of interesting things to clarify allowable access to individual wage records, which are referred to in the rule as "confidential UC data". The relevant language revises UC Part 603 regulations, and can be found beginning on p. 552 of the DOL regulations.

The rule says that individual UI records may be shared with "public officials" to use as they perform "official duties". So the definitions of these terms are the key.

Public officials are defined to include elected officials and executive branch agencies. The definition specifically includes three types of educational entities:

- part of a State's executive branch, i.e., derive authority either directly from the Governor or from an entity (State Board, commission, etc.) somewhere in that line of authority
- established or governed under state law but independent of the executive branch, for example, a State Board of Regents.
- community/technical colleges



So clearly, individual wage data may be disclosed to colleges, but only for performance of official duties. WIOA accountability reporting is an allowable purpose for colleges to receive individual data. Even if your state workforce agency is doing the matching for WIOA reporting, colleges can still receive individual UI data for some other purposes, such as activities “otherwise required for education or for workforce training program performance accountability and reporting under Federal or State law.”

In gathering wage data information, private contractors and non-government not for profits are prohibited from accessing the data. How will this issue be fixed prior to implementation? This is especially true for Job Corps Center operators and National Training Contractors.

Correct, the WIOA regulations do not allow non-public organizations access to individual UI wage data. In order to report aggregate outcomes that include participants served by non-public organizations, state agencies can collect these organizations’ participant records and match those records with UI wage data. The matching is enabled through a partnership with a public agency. For Job Corps specifically, the regulations note that the Department of Labor will issue annual guidance on performance reporting and outcome measurement, so additional information on measuring performance may be provided at a later time.

Data Systems and Labor Market Information

One of Rachel's slides discussed improving labor market info (including wage records). The existing workforce info grants to states at about \$35M does not provide the states the necessary info for data driven local data, supply/demand systems, career pathway analysis, skills data needed to analyze job openings, analysis of wage records, etc. Will WIOA authorization and funding be there to help WIOA boards have the necessary info to evaluate their local labor markets?

In proposed § 679.510, the WIOA regulations say that states “must provide technical assistance and labor market data, as requested by local areas, to assist with regional planning and subsequent service delivery efforts.” It is the intent of the WIOA statute and regulations that states make available high-quality regional labor market information. Of course, as you note, states’ ability to do so is contingent on funding. Congress decides each year through an appropriations bill how much funding to provide for grant programs. The funding for workforce information grants to states has declined or remained steady in each of the past several years, and it is unlikely that more funding will be provided through the appropriations process in 2016.

Will there be a data base or a reporting system for shared credentials or shared attendance of postsecondary education for performance?

Some states collect and keep data on postsecondary enrollment and credential attainment from public colleges and universities. In these states, WIOA service providers might be able to link to



this data and track credential attainment over time. However, very few states have for-profit schools or CBO-run training program data in their systems, or centralized data on attainment of licenses or industry certifications, so these would be gaps in reporting on the performance indicators.

Any chance that Department of Education will regulate FERPA to improve workforce data sharing between Departments of Education and Labor?

It's unlikely that the Department of Education would revise FERPA regulations this year, because Congress is currently looking at passing a revised FERPA law. There are currently two draft bills to amend FERPA being discussed in Congress, and they are summarized and compared to current law in [this table](#). The existing FERPA regulations do allow departments of education to share student records with departments of labor for specific purposes, but there are a lot of myths out there about what is & is not permitted.

Thank you for this very informational webinar! I have a two-part question: 1) Please recommend a resource for additional info re: Rachel's presentation on increased access to wage data matching to education entities. 2) How do the WIOA data provisions impact State Longitudinal Data System efforts?

1) The WIOA regulations do a couple of interesting things to clarify allowable access to individual wage records, which are referred to in the rule as "confidential UC data". The relevant language revises UC Part 603 regulations, and can be found beginning on p. 552 of the DOL regulations.

The rule says that individual UI records may be shared with "public officials" to use as they perform "official duties". So the definitions of these terms are the key.

Public officials are defined to include elected officials and executive branch agencies. The definition specifically includes three types of educational entities:

- Part of a State's executive branch, i.e., derive authority either directly from the Governor or from an entity (State Board, commission, etc.) somewhere in that line of authority
- Established or governed under state law but independent of the executive branch, for example, a State Board of Regents.
- Community/technical colleges

Purposes for which these education entities are allowed to get individual UI data include:

- WIOA state and local performance accountability
- Required reporting on federal grants awarded under WIOA
- Other required performance reporting under federal or state law



2) States are still figuring out how WIOA implementation will interact with state longitudinal data system efforts. In some states, it may be ideal for WIOA reporting to pull information from state longitudinal data systems. In others, technical challenges could make that impractical. Workforce Data Quality Campaign plans to keep in touch with states as they work through these issues and share promising ideas.

Adult Education

Did the presenter just confirm that the NRS levels for assessment is and might change?

Yes. In January 2015, OCTAE published a draft proposal for new descriptors for the National Reporting Standards educational functioning levels. The WIOA regulations note that this effort to revise descriptors is in currently in progress, and propose to take several tasks related to this issue *out* of the regulatory process so they can be addressed through a less-formal approach known as an “information collection.”

For example, the WIOA regulations note that once the new NRS descriptors have been defined, new tests may need to be developed to measure changes in the educational functioning levels.

The process of test development and approval is likely to take several years, and in the meantime OCTAE is proposing to *continue* using the existing NRS educational functioning levels. This information can be found in [Sec. 462.44](#) of the Notice of Proposed Rulemaking.

Apart from dislocated and adult workers are there any other provision for special communities like new immigrants trainings or career pathways for them?

In general, the WIOA statute and regulations contain little specific guidance on how states are to approach serving immigrant populations. WIOA Title I services include both Adult and Dislocated Worker funding. Work-authorized immigrants are eligible to receive services in both of these categories, provided they meet other eligibility criteria.

We are not aware of any *specialized* services for immigrant jobseekers mandated under Title I. However, the WIOA statute does state that priority for Title I career and training services is to be given to people on public assistance, other low-income individuals, and those who are basic skills deficient. The draft regulations require states and local areas to establish criteria for providing this priority of service.

WIOA Title II services focus on adult education, including Adult Basic Education, High School Equivalency, Integrated English Language and Training (IET) and English Language Acquisition/Civics Education (ELA/CE). Immigrants can participate in any of these activities, again providing they meet general eligibility criteria.

In addition, Title II contains additional language specifically affirming that immigrants with degrees or credentials from abroad are eligible to participate in ELA/CE programs – provided they meet other eligibility criteria. See Sec. 203 (12) on page 187 of [the WIOA statute](#).



Do these indicators mean that we will be unable to serve the undocumented?

There has been no change in statutory requirements on this issue. WIOA Title I (employment services) continues to require that participants be legally authorized to work in the U.S. WIOA Title II (adult education services) continues not to inquire about the immigration or work authorization status of participants.

The proposed WIOA regulations do not address the issue of how programs should track the employment outcomes of participants whose data may not appear in state Unemployment Information systems records.

Given that this issue is being raised in a number of states, it is possible that further guidance or information will be issued on this topic. National Skills Coalition will continue to share information as it becomes available to us.

1. There is some concern that people with low level English skills who are not able to work in US and have advanced degrees so are not interested in transitioning to postsecondary pathways will no longer be eligible for Title II funded programs (because they are not pursuing either academic or career pathways). Is this a correct understanding?

2. Re Title II, can AEFLA funds be used to educate adults who will not be entering workforce, e.g. retired persons, or those who are not seeking NEW career pathways (e.g. already employed and not seeking to enter a high-demand industry sector)?

We have combined these two questions because they are very similar. Congress has very clearly delineated in the WIOA statute that participants in Title II English Language Acquisition programs should be working toward one or more of the required goals: Attainment of a high school diploma or equivalent and transition to postsecondary education and training; or employment. See, for example, Sec. 203 (6), on page 186 of [the WIOA statute](#).

Admittedly I haven't read the Title II regs, so can you briefly describe the role of WIBs in "reviewing" Adult Ed aps?

The role is best described as a pre-review, as it entails the Local Workforce Development Board reviewing applications for funding before they are submitted to the eligible state agency. Details about the proposed process can be found in [Sec. 463.21](#) and following.

Are any changes anticipated in WIOA funding formulas for adult education (Title II) programs by state?

We are unaware of proposed changes at this time.

1. Regarding EL/Civics: You said that it "may include workforce training" but then that it should be "offered in combination with integrated education and training." I'm confused about how those two statements work together. Can you say more about this? Also, what does "in combination" mean, if you know?



2. Integrated EL/Civics - Should be or must be in conjunction with IET? Sounds like funding stipulates must be.

We have combined these two questions, as they are closely related. WIOA mandates that providers who offer Integrated English Literacy/Civics Education programs (IEL/CE) do so “in combination with” Integrated Education and Training programs (IET).

Per the Notice of Proposed Rulemaking, this “in combination” requirement can be satisfied in two possible ways: First, if the provider itself provides both kinds of services; or second, if the provider provides IEL/CE and co-enrolls participants in an IET program offered by another provider in the local or regional workforce development area. [See Sec. 463.74](#)

Regarding the phrase “may include workforce training,” this refers to the content of the IEL/CE program itself (independent of any IET program). See [Sec. 463.33](#)

What will be the job-ready instruction requirements under Adult Education?

It is not clear what this question refers to. If it is in reference to the “workforce preparation activities,” discussed in WIOA, those are defined in [Sec. 463.34](#).

