

National Skills Coalition Comments on Workforce Innovation and Opportunity Act (WIOA) Notices of Proposed Rulemaking (NPRMs)

May 2015

National Skills Coalition — a broad-based coalition of business leaders, union affiliates, education and training providers, community-based organizations, and public workforce agencies advocating for policies that invest in the skills of U.S. workers — 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.

WIOA replaces the Workforce Investment Act of 1998 (WIA), and reflects the growing recognition that in order to adequately address the skills needs of workers, jobseekers, and employers, we must do a better job of coordinating across multiple education, training, and supportive services programs. WIOA calls for states to develop and implement state workforce plans that incorporate a broad range of federal and state investments, and establishes common performance measures across programs to facilitate greater alignment across systems.

WIOA reflects a workforce system that is constantly evolving and innovating to keep up with the demands of today’s labor market, incorporating proven best practices such as industry or sector partnerships to ensure that training investments are connected to the needs of local and regional industries, and career pathways models that help to ensure that individuals at all skill levels have meaningful opportunities to advance with those target industries. WIOA also updates and expands the allowable activities across the WIOA core programs to strengthen the emphasis on job-driven training strategies and other successful models.

National Skills Coalition strongly supports the vision and goals of WIOA, and we look 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. The NPRMs released by the Departments in April 2015 are a critical step towards achieving that vision, and throughout our comments we note areas where we believe the draft rules are consistent with the statutory intent, as well as areas where we believe additional regulatory clarification or guidance may be needed.

Our comments are provided in three sections:



- In the section on NPRM 1205-AB74, we provide comments on the proposed rules relating to state unified and combined plans under new 20 CFR part 676 (and corresponding section under 34 CFR part 361 and part 463), and the performance accountability provisions at 20 CFR part 677 and corresponding sections under 34 CFR.
- In our comments on NPRM RIN 1205-AB73, National Skills Coalition focuses on five key issues under WIOA Title I: 1) the development and implementation of industry or sector partnerships; 2) the development and implementation of career pathways; 3) provisions implementing youth services under Title I-B; 4) the priority of service requirements set forth in WIOA section 134; and 5) the updated Eligible Training Provider List (ETPL) requirements
- Finally, in our comments for NPRM RIN 1830-AA22, we address the draft rules relating to the Adult Education and Family Literacy Act under 34 CFR, with a particular focus on provisions relating to local workforce development board review of Title II applications, integrated education and training programs, and the definition of career pathways as part of English language acquisition programs.

1. National Skills Coalition Comments on NPRM RIN 1205-AB74

A. Unified and Combined Plans

While WIOA largely retains the governance structure and program activities established under WIA, it makes a number of key changes intended to support greater alignment across federal workforce and education programs. One of the major changes under WIOA to support these alignment efforts is a requirement that states develop and submit “unified state plans” covering all core programs authorized under the law, rather than submitting separate plans for each program. The law also authorizes states to submit “combined” plans that could incorporate other federal workforce programs, including programs funded through the Temporary Assistance to Needy Families (TANF) block grant, and career and technical education programs funded under the Carl D. Perkins Act.

The new planning options under WIOA present a unique opportunity for states to strengthen integration between employment, training, and supportive services programs that have traditionally operated in silos. The increased coordination between core programs and other systems could have significant benefits for low-income and other hard-to-serve populations, who are often caught in the gaps when eligibility, performance, or funding requirements are not adequately aligned.

National Skills Coalition believes that the Departments’ proposed rules at 20 CFR 676 (and corresponding sections under 34 CFR) governing unified and combined state plans are largely consistent with these goals. We support the Departments’ inclusion of a “purposes” section at



20 CFR 676.100 that emphasizes the need for greater collaboration and coordination across systems, and in particular referencing the need to ensure that workforce and education investments support the needs of individuals with barriers to employment.

We offer two recommendations that we believe will support the legislative intent of WIOA:

- The draft regulations at 20 CFR 676.105(d)(2), which implement the statutory language at WIOA 102(b)(1)(E), specifically require that unified state plans include strategies for aligning the core programs with optional programs and other resources to support the state’s vision and goals. The term “optional programs” is not used in sec. 102(b)(1)(E), but from the context it is apparent that the Departments intended to refer to the programs described at sec. 103(a)(2) and proposed 20 CFR 676.140(d). National Skills Coalition strongly supports this language, which would help ensure that states engage in cross-program planning and alignment activities even in instances where the states do not choose to submit a formal combined plan. We would encourage the Departments to explicitly clarify this intent by amending proposed 676.105(d)(2) to include “as described in §676.140” after the words “optional programs.”
- The draft regulations at 20 CFR 676.140(e)(4) reiterate the statutory requirement that all of the entities responsible for planning or administering a program described in a combined plan have a meaningful opportunity to review and comment on all portions of the plan. We believe this language could be strengthened to require assurances that all such entities have approved the inclusion of the program in a combined plan, especially where such programs do not fall under the direct control of a governor.

In addition to the specific recommendations above, National Skills Coalition notes that the NPRMs also make multiple references to “joint planning guidance” that will be issued by the Departments at an unspecified date, and which will provide additional instructions relating to the planning process and plan elements, particularly with respect to combined plans. We are concerned that some states may be waiting for definitive guidance from the agencies before beginning their planning processes in earnest, and that this may cause some states to bypass key opportunities for stakeholder engagement in an effort to meet the statutory deadlines for plan submission. This would undermine the alignment goals emphasized under the statute while also reducing access to services for jobseekers and businesses alike.

We encourage the Departments to issue the joint planning guidance as expeditiously as possible, and to ensure that the guidance emphasizes the following:

- Establishing an inclusive planning process. WIOA requires that states provide opportunities for state agencies and other stakeholders to provide input and comments on the development of either unified or combined state plans. The joint planning guidance should clarify that all potential partner programs should be engaged in the development of the state’s strategic vision, regardless of whether the state opts to submit



a unified plan or combined plan, and the Departments should consider emphasizing the opportunity to submit unified or combined plan modifications following submission of the initial plan to ensure that non-core programs continue to be engaged in the planning and implementation process. The joint planning guidance should provide recommendations for how states can develop appropriate outreach and engagement strategies for stakeholders, and documentation of input and comments provided by those stakeholders.

- Cross-program alignment to support key strategies. Sector partnerships and career pathways are proven strategies that align workforce, education, and other programs to create multiple entry points and advancement opportunities for job seekers, including low-income individuals. WIOA requires state and local workforce development boards to implement these proven strategies, but provides limited guidance around how non-core programs and services can be engaged to ensure that they are meeting the needs of target populations and industries. The joint planning guidance could highlight opportunities for alignment at both the state and local levels.
- Encouraging common performance measures. WIOA establishes a set of primary indicators of performance that apply across the core programs, including indicators relating to employment, median earnings, credential attainment, skills gains, and effectiveness in serving employers. States are required to submit proposed levels of performance for each indicator across the core programs as part of the state plan. WIOA does not establish indicators of performance for non-core programs, nor are states required to establish performance levels for such programs. States should be encouraged to apply the WIOA common measures to additional programs. Using consistent measures across additional programs will facilitate coordination across programs. In addition, in setting performance targets for additional programs, states should be encouraged to use statistical adjustments that take into account economic conditions and participant characteristics, such as the statistical adjustments for WIOA, when permissible under the statutes of other programs.

B. Data and Performance Accountability

WIOA contains a number of changes from WIA that will improve cross-program data and performance measurement that will help create a system of shared accountability across the core programs and perhaps beyond. These changes include establishing common performance indicators for the core programs and for training providers, common methods for establishing adjusted levels of performance, common requirements for performance reports, and steps to facilitate common data collection and data linking. Shared accountability recognizes that multiple programs often contribute to outcomes for participants and employers and that multiple programs should be given credit and held responsible for the outcomes. A focus on shared accountability not only reflects this reality, it incentivizes programs to work together to



improve their mutual outcomes. The following comments on the NPRMs for performance accountability are offered in this context.

- **Definitions of “exit” and “participant.”** Proposed § 677.150(c) defines the term “exit” for “the purposes of performance accountability.” The definition of “exit” for the primary indicators of performance should be for a “shared” or “common” exit across WIOA — when a participant no longer receives a service from any of the 6 core programs except for follow-up and informational-only services. This definition of exit would support career pathways and other cross-program participation that can benefit participants. In order to properly implement such a definition, it is crucial for states to have performance management systems that can accurately track co-enrollment.

The Departments should give further consideration to defining “exit” and “participation” for the purposes of the required eligible training provider reporting on all students. The definitions of “participant” and “exit” are not appropriate for the way that most students enroll in and progress through postsecondary education programs at institutions of higher education. For instance, the 90-days-to-exit provision could be the equivalent of a student not taking classes for a summer term. The “exit” definition also raises questions for student transfer between institutions or programs. In addition, postsecondary students participate in a variety of ways that may not be captured by the “participant” definition. For example, many students never officially “enroll” in a program of study, instead taking courses for a period of time before deciding on a particular degree pathway. It is currently unclear what population of students should be included in reporting, and additional guidance is necessary. When possible, this guidance should seek to utilize existing data sources and definitions to streamline data collection and burden on institutions.

- **Employment measures.** The joint NPRM discusses the Departments’ thinking regarding the two Primary Indicators of Performance for employment. The Departments propose collecting or reporting information on two employment measures in addition to the statutory primary indicators of performance for employment. The Departments propose collecting or reporting information on an entered employment measure and an employment retention measure, similar to the measures that were in WIA.

We believe it is a mistake for the Departments to highlight measures of entered employment and employment retention. Focusing attention on these measures is confusing for the system and creates greater inertia impeding the system’s transition from the measures in WIA to the measures in WIOA. The Departments can still analyze data on employment in various ways without drawing attention to the old measures. At a minimum, the Departments should be clearer that collecting or reporting entered employment and employment retention would be for informational purposes only and not for performance accountability. The primary indicators of performance for employment remain as defined in the statutory language and as repeated in Proposed §



677.155(a)(1)(i) ad (ii); i.e., the indicators apply to all exiters, not a subset who were, respectively, unemployed at registration or employed during the second quarter after exit. The changes from WIA, among other things, make the employment indicators more useful as common measures for programs and training providers that serve low-income individuals.

- **Postsecondary credential attainment measures.** Proposed § 677.155(a)(1)(iv) implements WIOA’s fourth statutory indicator and measures postsecondary credential attainment and high school completion of program participants during participation in the program or within one year after exit. WIOA presents a great opportunity to learn more about the credentials being earned by participants in the workforce system. The credential attainment measure includes a variety of credentials, including licenses and certifications, which are often challenging to track but are important to acknowledge, as they appear to have significant value in the labor market. Regulations on credential attainment reporting should strike a balance between incentivizing collection of better data and unfairly penalizing states that do not have the ability to reliably measure attainment of all types of credentials. The Departments could consider a phased approach for making licenses and certifications part of performance levels, but in all cases, programs should have to start reporting on all types of credentials — by type (i.e. degree, certificate, license, or certification) — received by participants. This would build system capacity and provide valuable information about how different types of credentials correlate with labor market outcomes.
- **Measurable skill gains measure.** Proposed § 677.155(a)(1)(v) measures the percentage of participants who, during a program year, are in education or training programs that lead to a recognized postsecondary credential or employment, and who are achieving measurable skill gains. The Departments are defining this as “documented academic, technical, occupational or other forms of progress, toward the credential or employment,” and are considering using this indicator to measure interim progress. Documented progress could include such measures as: (1) The achievement of at least one educational functioning level of a participant in an education program that provides instruction below the postsecondary level; (2) attainment of a high school diploma or its equivalent; (3) a transcript or report card for either secondary or postsecondary education for 1 academic year (or 24 credit hours) that shows a participant is achieving the State unit’s policies for academic standards; (4) a satisfactory or better progress report, towards established milestones from an employer who is providing training (e.g., completion of on-the-job training (OJT), completion of 1 year of an apprenticeship program); (5) the successful completion of an exam that is required for a particular occupation, progress in attaining technical or occupational skills as evidenced by trade-



related benchmarks such as knowledge-based exams; and (6) measurable observable performance based on industry standards.

The Departments' proposed approach for measuring the indicator of skill gains makes sense. As in the Departments' proposal, it is important to recognize academic, technical, and occupational progress and to provide a variety of options for documenting progress. It is also important to require documentation that can be standardized. In this regard, it will be very challenging to identify a way, or ways, to document "(6) measurable observable performances based on industry standards." While this measure is desirable in concept, it may not be possible to implement in a valid and reliable manner.

- **Employer Effectiveness Measures.** The measure of effectiveness in serving employers, Proposed § 677.155(a)(1)(vi) and discussed in the Preamble on Page 20587, should be a shared or common measure or measures across WIOA. A program-by-program approach could lead to competition and duplication among programs seeking to engage with employers.

We recommend two measures of effectiveness in serving employers. One should be the repeat/retention rate for employers' use of the core programs. This is one of the three options presented in the Preamble. The second should be a measure of employer engagement in sector partnerships. We suggest the number of workers employed by businesses participating in sector partnerships. Such a measure would incentivize the formation of sector partnerships and the creation of partnerships of substantial scale. The option discussed in the Preamble of measuring participant retention with the same employer should be dismissed. Individuals typically obtain greater increases in earnings by voluntarily switching employers than by retaining employment with the same employer. The other option discussed by the Departments — a market penetration measure that counts any type of employer transaction — would focus the system too much on the breadth of employer involvement, rather than the depth or quality of employer involvement.

The Departments should empirically test ways of specifically defining and operationalizing the two recommended measures. Over time, the Departments may also discover better methods of measuring effectiveness in serving employers, perhaps due to improvements in technology.

- **Youth earnings measure.** The earnings measure for youth, proposed § 677.155(d)(3), should exclude youth who are enrolled in postsecondary education or training; otherwise, postsecondary enrollment (a good thing) would suppress the earnings outcome by reducing hours of work. This aspect of defining the youth earnings measure could be described in guidance rather than regulation.



- **Applying performance indicators to non-core programs.** The Departments request comments on using the performance indicators identified in § 677.155 for additional programs beyond the core programs. NSC supports the use of common metrics across education and workforce programs whenever possible and appropriate. The WIOA primary indicators would work well for a variety of programs.
- **Use of regression models to adjust performance levels; factors to include.** We appreciate the Departments' commitment to using a statistical model to adjust performance levels — both in advance of the program year to assist with negotiating ambitious but realistic performance targets that allow service to those most in need, and following the program year to account for actual economic conditions and participant characteristics. The Departments request comment on whether any additional factors beyond those in the statute and in § 677.170 should be considered in developing the model. The Departments could consider including race and Hispanic ethnicity as additional factors in the model. State regression analysis has found these factors to be correlated with some performance outcomes. Unfortunately, due to discrimination, there are barriers to education and employment associated with race and ethnicity may be independent of the other factors. The Departments could analyze WIOA data to test collinearity and see whether race/ethnicity might contribute in a statistically significant way to explaining outcomes.
- **Use of Unemployment Insurance/wage records.** We support the Departments' proposed § 677.175, which acknowledges Unemployment Insurance (UI) wage records as the best source for WIOA reporting. We agree, but note that there are gaps in wage records, including those who are self-employed. We urge the Departments to expeditiously issue additional guidance, as was done under WIA, on acceptable ways to track employment outcomes for participants for whom wage record matching is not a viable solution. Furthermore, the indicator outcomes shown on required performance reports should incorporate information from allowable alternatives to wage records.

We also support the Departments' commitment to renegotiate the Wage Record Interchange System (WRIS) agreement to allow all WIOA core programs to use the system for performance reporting. We encourage the Departments to also make clear that all the core programs may use the Federal Employment Data Exchange System (FEDES) for WIOA performance reporting.

- **Weighting of Indicator Scores.** For the overall indicator scores at proposed § 677.190, programs should not be weighted but should instead each count equally. If the programs were weighted by the number of participants, the results for Title III would dominate the average. If the programs were weighted by the amount of funding, Title IV results would count much more than the results for other programs. Counting each program equally supports the goal of shared accountability.



Proposed § 677.190, to measure average performance across indicators and average performance across programs are positive steps that support measuring system-wide performance and shared accountability. Setting a relatively high threshold (such as 90 percent) for the two types of average scores and a very low threshold (such as 50 percent) for the individual indicators helps to further emphasize the importance of system-wide performance. It is difficult to know a priori whether or not 90 percent is too high of a threshold. It may be best to identify thresholds in guidance rather than regulation in order to make it easier to change the thresholds should experience demonstrate that change is warranted. If the thresholds are to be identified in regulation, then it would be better to start with a threshold lower than 90 percent, such as 80 percent.

2. National Skills Comments on NPRM RIN 1205-AB73

A. Industry or Sector Partnerships

WIOA establishes the development and implementation of industry or sector partnerships as a required activity at both the state and local levels. WIOA section 101(d)(3)(D) requires state workforce development boards to assist the Governor in the development and expansion of strategies for meeting the needs of employers, workers, and jobseekers, *particularly through industry or sector partnerships* related to in-demand industry sectors and occupations (emphasis added). WIOA section 134(a)(2)(B) provides that states must use a portion of state set-aside funds to assist local areas by providing information on and support for the effective development, convening, and implementation of industry or sector partnerships. Section 134(c)(1)(A)(v) requires that Title I-B funds allocated to local areas must be used to develop, convene, or implement industry or sector partnerships.

These statutory changes reflect the growing recognition of sector partnerships as a key element of successful workforce development systems. According to a forthcoming National Skills Coalition 50-state scan, nearly half of all states have adopted policies to support local sector partnerships, and research indicates that these strategies support positive outcomes for both workers and business partners. However, despite the emphasis on sector partnerships under WIOA, the NPRMs released by the Departments of Labor and Education provide relatively little guidance on how states and local areas are expected to meet their statutory requirements with respect to industry or sector partnerships.

While we recognize that the lack of specific regulatory requirements may support greater flexibility for states and local areas to innovate, we are concerned that the current draft rules may lead to confusion as stakeholders seek to implement WIOA. In particular, we are concerned that the limited instructions in the draft rules – relative to the extensive guidance provided with respect to other workforce strategies – may signal to states and local areas that the development of industry partnerships is not a high priority, which in turn may result in delayed implementation or expansion of partnerships as scarce resources are allocated to other



services. We believe that this outcome would not only be contrary to Congressional intent, but would also represent a significant missed opportunity for states and local areas to more fully integrate these proven models into the broader workforce development system.

National Skills Coalition recommends the following changes to the NPRMs:

- Amend the unified state plan requirements at proposed 20 CFR 676.105 (and corresponding sections under 34 CFR part 361 and 463) to require states to describe how they will carry out the requirements under WIOA sections 101(d)(3)(D) relating to the development of industry or sector partnerships.
- Proposed 20 C.F.R. 679.510(a)(1)(3)(iii) restates the statutory requirement at WIOA sec. 106(c)(1)(C) that local boards and chief elected officials in designated planning regions engage in a regional planning process that, among other things, results in the “development and implementation of sector initiatives for in-demand industry sectors or occupations.” The final rule should clarify that sector initiatives identified through the regional planning process shall include, but are not limited to, activities carried out through industry partnerships developed pursuant to WIOA section 134(c)(1)(A)(v). The final rule should require regional plans to clarify the relationship between regional sector initiatives and any industry or sector partnerships in the regional planning area, including descriptions of regional industry or sector partnerships that include multiple local boards as partners and – where industry or sector partnerships are implemented in partnership with a single local board – how that local board will minimize duplication of efforts across local areas.
- Under proposed 20 CFR 680, “Delivery of Adult and Dislocated Worker Activities Under Title I of the Workforce Innovation and Opportunity Act,” establish a new subpart H covering Industry or Sector Partnerships. The new subpart should, at a minimum:
 - Describe the purposes of industry or sector partnerships, with explicit language to clarify that simply providing career services or training to employers within in a particular sector or industry is not sufficient to meet the statutory requirements under sec. 134(c)(1)(A). The purpose section should further emphasize the value of engaging multiple partners connected with a target sector – including business, labor, higher education, and other stakeholders – to support the development and sustainability of local and regional industries, and could clarify that addressing the workforce needs of both workers and businesses in target sectors is necessary to the success of these partnerships.



- Reiterate the required partners for an industry or sector partnership as set forth in WIOA section 3(26)(A) and the permissible partners under section 3(26)(B). In particular, define the requirement at WIOA section 3(26)(A)(i) that an industry or sector partnership include “multiple” businesses or other employers. The Department of Labor recently released Training and Employment Guidance Letter (TEGL) 31-14 announcing new sector partnership National Emergency Grants, which among other things requires applicants to identify business partnerships including “multiple (at least three) employer partners that represent a significant percentage of the jobs in the sector of focus.” Establishing similar requirements relating to both a minimum number of business partners and a percentage of current or future job openings in the target sector would be helpful to local areas, though we would encourage the agency to avoid establishing minimums that may discourage the involvement of small and mid-sized businesses.
- Clarify that a local workforce development board does not have to serve as the lead partner in an industry or sector partnership, and clarify that industry or sector partnerships that were established or implemented prior to the effective date of WIOA implementation may be considered as meeting the requirements under section 134(c)(1)(A)(v) so long as the local workforce development board is actively contributing to the ongoing development and implementation of the partnership. This language would help to ensure that local workforce development boards do not duplicate efforts that have already been successful in the target industry or sector, and should also encourage local workforce development boards to strengthen their engagement with existing partnerships, where appropriate.
- Include language that clarifies that local workforce development boards can partner with other local workforce development boards within or across planning regions to develop, convene, and implement industry or sector partnerships, consistent with the proposed amendments to 20 CFR 679.510(a)(1)(3)(iii). It is likely that at least some target industries or sectors will extend across multiple local areas, and sometimes across state lines, and so the final rules should indicate that a local board may satisfy the requirements under WIOA sec. 134(c)(1)(A)(v) through participation in a regional industry or sector partnership, so long as the local board is actively participating in carrying out activities in support of that industry or sector partnership.



- Clarify whether there are minimum activities that a local workforce development board must carry out in order to meet the requirements of section 134(c)(1)(A)(v). While this language should not be overly prescriptive, it should at least provide some examples of ways that local workforce development boards can demonstrate engagement in a partnership, including providing staff support, developing or funding sector-specific training activities (including work-based training), or convening meetings of the partnerships.
- Identify the ways in which states and local areas can evaluate the effectiveness of industry or sector partnerships. As noted in our comments relating to the WIOA performance accountability measures, we believe it would be useful to include a measure of employer participation in industry or sector partnerships as one of the indicators of effectiveness in serving employers required under sec. 116(b)(2)(A)(i)(VI). The final rule should include language that incorporates these performance requirements, and authorizes states and local areas to establish additional performance measures, as appropriate.
- Eliminate the current references to industry or sector partnerships in proposed 20 CFR 678.435, which generally describes the business services that must be provided through the one-stop delivery system. While we recognize that engagement of employers in target industries is a defining feature of successful industry or sector partnerships, as noted above we believe it is also important to distinguish between developing and implementing sector partnerships, and simply providing career or training services to businesses in a particular industry. We are also concerned that despite the clear language at subsection 678.435(a) that indicates that sector partnerships are a required activity, the proposed regulations at subsection 678.4335(c) appear to suggest that industry or sector partnerships are merely one of a range of permissible activities that local workforce development boards may consider in meeting business customer needs. There might be some value in amending the current language to require or encourage local boards to ensure that business services offered through the one-stop system can support the broader goals of industry or sector partnerships in the local area.

B. Career Pathways

While the term “career pathways” has been in use for years, prior to WIOA there had never been a consensus definition, as different segments of the education and workforce development communities have developed a range of strategies – from sequences of specific courses within individual organizations to cross-agency partnerships at the state level – that have been referred to as career pathways programs, models, or systems. WIOA represented the first time that the term had been defined in federal legislation, and while the statutory definition at sec. 3(7) did not encompass all of the elements or characteristics that have been associated with career



pathways, it did appear to provide a set of minimum requirements that would apply to the use of WIOA Title I and II funds, including requirements that a career pathway must enable an individual to obtain both a secondary school diploma or its recognized equivalent and a recognized postsecondary credential, and that a career pathway must help an individual enter or advance within a specific occupation or occupational cluster.

WIOA also made the development of career pathways a required activity at multiple levels within the workforce system, especially under Title I. Under WIOA sec. 101(d)(3)(B), state workforce development boards are responsible for “the development of strategies to support the use of career pathways for the purpose of providing individuals, including low-skilled adults, youth, and individuals with barriers to employment (including individuals with disabilities), with workforce investment activities, education, and supportive services to enter or retain employment.” Section 107(d)(5) requires local workforce development boards to work with representatives of secondary and postsecondary education programs to develop and implement career pathways, and sec. 108 requires that local plans include a description of how local boards will coordinate across the WIOA core programs to facilitate career pathways. Under the WIOA Youth program, career pathways are specifically identified as a component of both the objective assessment and the individual service strategy required at sec. 129(c)(1)(A) and (B).

However, despite the extensive references to career pathways, WIOA is relatively vague on what activities states and local boards must carry out in order to meet their minimum statutory requirements with respect to implementation, particularly whether states or local areas must develop specific policies or procedures to support career pathways. The law also does not clarify whether local boards are required to implement each element outlined in the statutory definition; for example, sec. 3(7)(C) indicates that a career pathway includes counseling to support an individual in achieving the individual’s education and career goals, but it is unclear whether this creates an affirmative responsibility on local boards to document the availability or provision of counseling services with respect to either adult or youth participants. In the particular context of WIOA Youth programs, the statute does not indicate whether the identification of career pathways as part of the assessment and individual service strategy imposes any additional substantive requirements on local areas or youth service providers.

The NPRMs provide little detail beyond asserting that career pathways are a “focus” of the law, and reiterating the statutory language. While we appreciate that the draft rules provide states and local areas with significant flexibility to expand on existing strategies and develop new pathways, we are concerned that in the absence of clear guidance and accountability, states and local areas will have limited incentives to invest in the multi-stakeholder planning and implementation activities that would support inclusive career pathways. This could have particularly serious consequences for prospective participants who have barriers to employment, such as those with low literacy or English language skills. To address these concerns, and to ensure that WIOA’S emphasis on career pathways is fully realized, we would propose that the agencies add clarifying language with respect to state unified and combined



plan requirements under WIOA sec. 102 and 103, local board functions under sec. 107 and the career pathways requirements for youth programs under section 129. Specifically, we would recommend:

- Amending the unified state plan requirements at proposed 20 CFR 676.105 (and corresponding sections under 34 CFR part 361 and 463) to require states to describe how they will carry out the requirements under WIOA sections 101(d)(3)(B) and 223(a)(1)(A) relating to the development of career pathways.
- Under 20 CFR Part 679, Subpart C, relating to local boards, add a new section entitled, “How does the Local Board meet its requirement to develop and implement career pathways?” The new section should clarify the minimum requirements that a local board must satisfy in order to demonstrate successful implementation of career pathways, including the establishment of a formal agreement or partnership between the local board, representatives of secondary and postsecondary education programs, and other entities that outlines the educational, training, and supportive services to be provided by each partner. Consistent with the language under section 107(d)(5), the agreement or partnership should include a description of how services will be provided to adults, youth, and individuals with barriers to employment.
- While not specifically required by WIOA, we believe the final rule should strongly encourage local boards to include representatives of programs providing Title II adult education services as part of the career pathway agreement or partnership. This will help support the statutory emphasis on providing access to secondary school diplomas or recognized equivalents, while also ensuring that individuals with limited basic skills are able to take advantage of career pathways opportunities. The final rule should also clarify that career services and training services supported through Title I funds may be included as part of a career pathway but that there is no requirement that all or any elements of a career pathway be paid for with Title I funds.
- Amend proposed section 20 CFR 681.420 (describing how local board must design WIOA youth programs) to clarify the career pathways requirements under subsections (a)(1) and (2). The amended rule should make clear that the local board may require that youth services be aligned with specific career pathways identified by the local board and incorporated as part of the local agreement or partnership described above, where appropriate. The rule should clarify that the requirement under WIOA section 3(7)(F) that a career pathway must enable an individual to “attain a secondary school diploma or its recognized equivalent, and at least one recognized postsecondary credential” does not limit the ability of local areas to serve youth who have already attained a secondary school diploma or its recognized equivalent. The rule should further clarify that the



requirement under WIOA section 3(7)(C) relating to counseling does not create an affirmative requirement for local boards or youth services to provide counseling to any individual, except to the extent that such counseling is consistent with the objective assessment and the individual service strategy.

C. Youth Services

Although WIA technically permitted Title I youth program participants to receive services under other federally-funded workforce programs, in practice youth programs have been relatively disconnected from the broader workforce system. In the most recent year for which national data is available, fewer than ten percent of WIA Youth participants between the ages of 19-21 were co-enrolled in the Adult (workforce) program, and less than one percent were co-enrolled in adult education programs. This lack of alignment meant that many youth participants – particularly older disconnected youth – were unable to take full advantage of the employment and education services for which they were eligible, and many youth service providers experienced barriers in leveraging outside resources to support youth participants.

WIOA made a number of significant changes to Title I youth programs, including increasing the minimum state and local expenditures on out-of-school youth (OSY) participants from 30 percent to 75 percent, requiring that not less than 20 percent of local formula funds be used to support work-based learning, and increasing the age limit for OSY participants from 21 to 24. National Skills Coalition believes these statutory changes will lead to improved employment and education outcomes for disconnected youth by allowing better alignment between youth services and other programs and activities offered through the workforce system, particularly proven strategies like industry or sector partnerships and career pathways initiatives. In general, National Skills Coalition believes that the proposed regulations promote the broader vision of WIOA, and we support the proposed rules under 20 CFR part 681.

We support the proposed language at 20 CFR 681.430(a) clarifying that individuals may be co-enrolled in the WIOA adult and youth programs, and further clarifying that individuals who meet eligibility requirements for Title I youth services and Title II services may participate in such programs concurrently. We believe that this language could be strengthened to encourage local boards to incorporate co-enrollment with other core programs as part of the overall youth program design. The language at proposed 20 CFR 681.400, relating to selection of eligible youth service providers, should include language encouraging local boards to ensure that the competitive process is not structured in a way that discourages or limits co-enrollment of youth participants in other core or partner programs where appropriate. These changes will support expanded access to needed services for youth participants and allow youth providers to leverage partner resources more effectively. They will also send a clear signal to local areas that youth services should not be offered in isolation from other programs, but should be integrated into the broader range of workforce development services offered in the local area.

We support the Department's proposed language at 20 CFR 450 relating to the appropriate length of services for WIOA youth participants. We agree with the Department that the



availability of youth services should not be impacted by artificial timelines imposed by the local area or youth service providers, and we hope that the Department will provide further guidance and technical assistance to the field to support the development of individual service strategies that lead to meaningful employment and educational outcomes for disconnected youth.

National Skills Coalition generally supports the Department's proposed regulations implementing the new work experience requirements under WIOA. However, we encourage the Department to consider explicitly encouraging local areas and youth service providers to coordinate work experiences with employers participating in industry or sector partnerships developed and implemented in the local area pursuant to WIOA section 134(c)(1)(A)(v). While this language should not be overly prescriptive, we believe that such language will support greater alignment between youth programs and employers while also offering businesses access to a broader pool of potential skilled workers. We also recommend that the Department clarify the language at proposed 20 CFR 681.600(b), which implements the statutory requirement that work experiences must include "academic and occupational education," to indicate whether such education may be provided by the participating employer and whether the education must be provided in the workplace.

D. Eligible Training Provider List

The proposed language regarding the Eligible Training Provider List (ETPL) in sections § 680.400-510, includes good steps that reflect how ETPLs can be best established and maintained in an efficient and effective manner. In particular, the proposed language appropriately describes the Governor's role, including designating a state agency or entity to assist the Governor and coordinate UI data matching. The most valid and reliable, as well as efficient, way to measure training providers' performance is for the state to first collect a small set of seed records from each provider for each student (e.g., social security number, program of study, start date, end date, credential, and demographic characteristics) and then link the records with unemployment insurance wage records and other administrative records used to determine outcomes. In order to meet the ETP reporting requirements in WIOA, as in Proposed § 677.230, the records should be collected, performance measured, and reported for each program of study that a provider wants to be eligible to serve WIOA-funded students.

E. Priority of Service

Under WIA, one-stop operators were required to provide priority for intensive and training services to recipients of public assistance and other low-income individuals in instances where local funds were "limited." WIOA strengthens this requirement by eliminating the conditional language relating to limited funding, and adding individuals who are basic skills deficient to the categories of WIOA participants who must receive priority of service. These statutory changes will help to address concerns that individuals with barriers to employment were often underserved through the one-stop system under WIA, and ensure that resources are more equitably allocated to support those with the greatest needs.



In general, National Skills Coalition supports the Department's proposed regulations implementing the new priority of service requirements, including proposed 20 CFR 678.430(b) that would designate those career services subject to the priority of service requirements as "individualized" services, and the requirement at 679.560(b)(21) that would require local plans to include a description of state and local directions to one-stop operators relating to priority of service. We do have some concerns about the proposed language under 20 CFR 680.600(c), which would authorize states and local areas to give priority to other eligible individuals so long as such priority was consistent with the requirements relating to veterans; though we recognize that there may be valid reasons for designating other categories of participants for service priority, there is a risk that states or local areas could dilute the statutory intent by adding multiple categories. We believe the language should be strengthened to clarify that any such designation must be subject to both the veterans priority of service requirements at 20 CFR 680.650 and the general priority of service requirements under 20 CFR 680.600(b).

3. National Skills Coalition Comments on NPRM RIN 1830-AA22.

Among the key changes to Title II under WIOA is a greater emphasis on the connection between adult education programs and employment. Both state eligible agencies and adult education providers are directed to foster well-functioning connections between Title II and Title I services, as well as Title II services' connection to local education, training, and support services more broadly. National Skills Coalition supports the intent of these changes, and encourages the Departments of Labor and Education to continue collaborating to provide meaningful guidance to the field on the most effective means of accomplishing WIOA's mandates in this area.

In addition, WIOA for the first time establishes statutory authorization for the program now known as Integrated English Literacy/Civics Education (IEL/CE), which had previously been authorized by Congress on a year-by-year basis. National Skills Coalition supports the robust and detailed conception of IEL/CE as detailed in the WIOA statute and the NPRM, including the emphasis on connection to employment and the specific affirmation of eligibility for English Learners who have credentials from abroad.

Throughout the NPRM, the Department proposes to formalize and standardize processes that have previously been conducted outside the regulatory system. National Skills Coalition generally agrees with these proposals, such as the proposal in 34 CFR Part 462 regarding the Secretary's authority to approve tests suitable for use in the National Reporting System (NRS). Increased standardization allows state agencies and providers greater predictability and stability.

National Skills Coalition makes the following recommendations with respect to NPRM RIN 1830-AA22:



- Elimination of current 34 CFR 462.44 relating to educational functioning levels.** Current 34 CFR 462.44 describes the descriptors for educational functioning levels that states and local providers report to the NRS. Because the Department is currently in the process of redefining the indicators through a separate information collection process, the Department proposes to remove and reserve section 462.44. National Skills Coalition supports this proposal, as revising these descriptors via an information collection process rather than regulation will allow for greater responsiveness in making these and future adjustments.
- Process for local board review of Title II applications.** WIOA section 107(d)(11) promotes coordination between local workforce development board and adult education providers by requiring that the board review a provider's application for Title II funds before the application is submitted to the state eligible agency. Given the uncertainty that is likely to accompany any new requirement, and the fact that a given adult education provider may be working in more than one local area, National Skills Coalition agrees with proposed Sec. 463.21, which requires eligible state agencies to establish a uniform procedure to be used by Local Boards for this review.
- Establishing "demonstrated effectiveness."** We agree with the proposed mechanism at 34 CFR 463.24 allowing eligible providers to establish that they have demonstrated effectiveness through the use of past performance data. Providing past performance data is a clear and compelling measure of whether a provider is capable of meeting WIOA performance standards. We would caution that in order to ensure equality of consideration for prospective providers serving harder-to-serve participants, it would be valuable for the Department to develop guidance for state eligible agencies to take into account the characteristics of participants served by providers in considering whether or not a provider's performance is sufficient.
- Defining career pathways for English language acquisition programs.** Proposed section 463.32 provides three potential ways in which English language acquisition programs can satisfy the requirement that the program leads to attainment of a secondary school diploma or equivalent and transition to postsecondary education and training or leads to employment. One of those proposed ways is "designing the program to be part of a career pathway."

As we note in our response to NPRM RIN 1205-AB73, both the WIOA statutory language and the draft regulations are unclear on how states and local boards must meet their career pathways requirements under Title I. We strongly encourage the Departments to strengthen and clarify the rules relating to career pathways implementation, including whether the term as applied under section 463.32 requires



coordination with career pathways being implemented by local boards pursuant to WIOA section 107(d)(5).

- **Defining “integrated” education and training.** Proposed section 463.37 defines how a program providing integrated education and training can meet the requirement that the three required program components be “integrated.” We agree with the proposed requirement that programs have a “single set of learning objectives that identifies specific adult education content, workforce preparation activities, and workforce training competencies.” We would encourage the Department to consider whether it may be appropriate to provide additional guidance to states and eligible providers on appropriate tools for measuring workforce preparation activities and workforce training competencies. Unlike adult education content, these two areas are newer curriculum elements for many providers, and it may be valuable to offer resources on how they can best be measured.

Finally, as we note in our comments with respect to NPRM RIN 1205-BB74, we encourage the Departments to issue additional guidance on acceptable ways to track employment outcomes for participants for whom wage-record matching is not a viable solution. Some participants served in Title II programs, though employed, will not be able to be matched with state UI records. It is important that states be provided with supplemental options to verify the employment status of such participants, to ensure that the full array of outcomes is captured. The Departments had issued such guidance in the past under WIA and it should be reissued for WIOA.