

New York City’s Recommendations for the Workforce Innovation and Opportunity Act

As the largest Local Workforce Investment Area (LWIA) in the country, the New York City Workforce Investment Board, in partnership with our public agency partners, offers the following six recommendations to the United States Department of Labor (USDOL) for Workforce Innovation and Opportunity Act (WIOA) transition and implementation. We have referred to the specific section in the legislation when applicable.

They are:

1. Permit LWIAs through the Local Board explicit direction and jurisdiction to direct workforce strategic planning and coordination of core programs.
2. Advocate for increased funding and align funding investment to meet local demand and fulfill WIOA mandates.
3. Uphold WIOA's intention for a streamlined, demand-driven, and business informed system that can support the education, training, and workforce needs of a diverse population of jobseekers and workers, including those most in need.
4. Maximize local flexibility to operationalize WIOA in a manner that best positions core programs for high performance and accountability.
5. Prepare LWIAs for WIOA transition through a phased-in approach to fulfill WIOA enactment.
6. Allow youth workforce activities to respond to the multitude of needs amongst youth.

Recommendation 1

Permit LWIAs through the Local Board explicit direction and jurisdiction to direct workforce strategic planning and coordination of core programs.

A. Recommendation Sec. 107: Appoint Local Boards oversight of WIOA Titles I, II, and IV.

- i. To assure the intention of WIOA is met to create an accountable, aligned, and integrated service delivery system that is informed by business input and labor market information, and to fulfill the expanded role of Local Boards to 'convene, broker and leverage', as described in Section 107(d)(3), we, to the extent practicable, recommend USDOL enable Local Boards to have oversight of WIOA Titles I, II, and IV.

B. Recommendation Sec. 107(d)(1): LWIAs play a significant role in developing and planning for the LWIA Local Plan, including a requirement to align to the Unified State Plan. However, it is necessary to allow LWIAs to develop their own strategies to best meet local need and demand.

Currently under WIA, New York State's Local Board's local planning process is heavily dictated by the State.

i. We recommend USDOL enable local areas to meet their responsibilities to the State Board under WIOA for statewide planning, and allows local areas to provide their own input, feedback, and strategies within the Unified State Plan that best meets local needs and demands. For example, regulations could state, "The Local Board has the authority to develop the local plan, as described in Section 108, and must to the best of their ability, align to the Unified State Plan. In instances where the Unified State Plan does not address critical local needs and demands, the local plan should allow the LWIA to include its own specific strategies that address local needs and demands."

ii. Additionally, for the initial years of the plan, we recommend allowing for an abbreviated plan to be provided in advance of the 2016 State plan, with the ability to revise and resubmit in 2017 to allow for more intensive local planning, if necessary.

C. Recommendation: Require State Workforce Investment Board membership represented by Chief Elected Official of largest and smallest LWIA to assure strategy unity.

i. As the governance body for the workforce development system in each state, the State Workforce Investment Board (SWIB) is required to include membership representation proportional to the entirety of the state. We urge the USDOL to include in such membership requirements the appointment of the Chief Elected Official of the largest and smallest LWIA in the state, based on WIOA funding allocation, to the SWIB to ensure a comprehensive review of statewide policies and programs and develop strategies to improve the workforce system. For example, regulations could be written as follows, " Pursuant to Section 101 (b)(1)(C)(iii)(bb), Chief Elected Officials appointed to the state workforce board shall be comprised at minimum of the Chief Elected Official of the largest and smallest LWIA, per their LWIA allocation in the state. In instances where a consolidated or multi-county LWIA is the largest or smallest in the state, the Governor shall have discretion for appointing a singular Chief Elected Official from the consolidated or multi-county LWIA to represent such LWIA."

Recommendation 2

Advocate for increased funding, and align funding investment to meet local demand and fulfill WIOA mandates.

A. Recommendation Sec. 101 (d)(8): Provide resources to execute core program integration.

We are encouraged that WIOA calls for core program integration so that seamless service delivery can be provided to all customers of the workforce system.

i. USDOL should advocate, alongside with LWIAs, for additional funding for core program integration and alignment, and award such funding in proportion to the LWIA allocation. This support will enable LWIAs to undertake the required local, regional, and unified planning process for all four WIOA core programs as well as begin core program coordination, and implementation as mandated under WIOA.

B. Recommendation Sec. 128 (a)(1) and Sec. 128 (b)(1): Provide guidance on 15% state set-aside investments to prioritize new requirements under WIOA such as the development of career pathways and industry partnerships.

Under WIOA, Local Boards are provided expanded responsibility and accountability for coordination and alignment, development of career pathways in Section 107(d)(5) and effectively engaging employers in Section 107 (d)(4).

- i. To signal the intentions and responsibility in WIOA of the Local Board's expanded role, USDOL should, to the extent permitted, define how the state must consult with the Chief Elected Officials, and Local Boards in the LWIAs pursuant to statewide workforce investment activities. We recommend that "consult" is defined as "providing the Chief Elected Officials and LWIAs a proposal for how the state set-aside will be utilized."
- ii. To the extent practicable, USDOL should strongly encourage the 15% set-aside to be used to develop career pathway programs, industry partnerships aligned to in-demand sectors, and strengthen adult literacy and high school equivalency trainings by contextualizing them to in-demand sectors.
- iii. To the extent possible, we ask that the state set-aside is proportionally awarded and invested across LWIAs in proportion to their WIOA allocation relative to the total state allocation.

C. Recommendation: Advocate for FFY10 WIA funding allocation levels.

i. We recommend USDOL strongly advocate for FFY10 WIA allocation, as called for in WIOA, and to actively demonstrate and educate the United States Congress of the value of investing in the workforce development system. It is critical that funding is increased under WIOA to meet local economic needs and demand for workforce, adult education, and vocational rehabilitation initiatives. In order to succeed in operationalizing WIOA requirements for coordinated services, common performance measures, core program planning alignment, creation of career pathways, and industry intermediaries to engage businesses, current funding levels will be severely stretched to achieve the intended results of WIOA as defined in Section 2 of the legislation.

Recommendation 3	Uphold WIOA's intention for a streamlined, demand-driven, and business informed system that can support the education, training, and workforce needs of a diverse population of jobseekers and workers, including those most in need.
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A. Recommendation Sec. 3 (52): Local areas should have the flexibility to define an industry-recognized credential.

National credentials or certifications are not available for all in-demand skill sets or occupations. For example, many technology occupations do not have national certifications available, but nonetheless offer high demand employment with specific skill criteria for employment.

i. While WIOA does not define industry-recognized credentials, they are a part of the definition of recognized postsecondary credential, applied in Section 3 (52). We recommend USDOL allow LWIAs to define industry-recognized certificates or certification. We propose the following language, "Local Boards shall have discretion to determine a definition of an industry-recognized credential or certification, including certificates or certifications endorsed by employers." This would provide LWIAs with the flexibility to create, in partnership with employers or industry partnerships, training programs resulting in a certificate validated by employers, but not licensed by a credentialing or certifying entity. This will address local labor market talent needs, especially where industry credentials may not be currently developed or defined.

B. Recommendation Sec. 107 (d)(4): Leverage and utilize existing employer engagement tactics and measures from the workforce development field.

We are pleased to see a focus on employer engagement that will encourage the development of a demand-driven, employer advised system.

i. As USDOL defines the employer engagement measure, we offer New York City's experience in building a demand driven workforce system as a model to consider for successful employer engagement measures.

ii. Given the local and regional nature of labor markets and economies, we strongly encourage USDOL to give Local Boards the authority to lead and coordinate employer engagement efforts.

C. Recommendation Sec. 134 (d)(4)(D)(ii) and Sec. 134 (c)(3)(H)(i): Simplify and align the "match" requirements across different types of training for businesses.

There exist inconsistent match requirements for customized, incumbent worker, and on-the-job trainings. As local areas engage employers, standard match requirements would provide clear options for employers when selecting a training program to implement.

i. We recommend making a distinction for employer size based on the definition of a small business according to the Small Business Administration: 250 or fewer employees. Further, we recommend that the match requirement be the same across all three types of employer-based training and for employer match to be based on business size so that employers can easily select and participate in these services. USDOL regulations could state, "In order to most effectively attract and engage employers to avert layoffs and/or train and upgrade their workforce, employer match requirements for customized training, incumbent worker training, and on-the-job training will be streamlined to the following match levels organized by business size."

Training Type	Match required of small businesses (1 to 249 employees)	Match required of large businesses (250+ employees)
Customized Training	10%	25%
Incumbent Worker Training	10%	25%
On-the-Job Training	10%	25%

D. Recommendation Sec. 123 (b): Enable LWIAs to use sole source procurement when there is only one qualified provider of a particular training for Adult and Dislocated Worker trainings.

i. The provision for sole source grants or contracts for youth workforce investment activities is allowable, and determined by the Local Board, when an insufficient number of training providers with the ability to meet performance accountability measures based on primary indicators of performance are lacking. These limitations of adequate training providers can also exist for Adult and Dislocated Worker trainings, such as in sectors like technology, manufacturing and transportation. We recommend the regulations state, "LWIAs are permitted to utilize sole source procurement for workforce training activities when there are limited or insufficiently qualified providers to provide training."

E. Recommendation Sec. 116 (b)(2)(A)(i)(V) and Sec. 116 (b)(2)(A)(iii)(III): To best align all Titles of WIOA, utilize current performance standard measures common in Adult Basic Education and English for Speakers of Other Languages.

i. Title I includes allowable activity for providing supportive services and financial literacy while Title II includes allowable activity for integrated education and civics education. In some cases there exists a diversity of client needs where a participant may need to enroll for the same training program multiple times, including Adult Basic Education (ABE), English for Speakers of Other Languages (ESOL), or workforce readiness programs. We recommend the common performance measure of "measurable skills gain" to include currently acceptable measures for literacy and numeracy attainment metrics utilized by ABE and ESOL providers. The measure should also include language such as "clients overcoming barriers to participation and progress." Regulations could state, "Up to 50% of clients in a Title I, Title II or Title IV training or education program may meet the measurable skills gain performance measure by demonstrating an increased ability to participate in the training program which has, or will result in progress toward completion of the training or education program."

F. Recommendation Sec. 134 (c)(2)(B) and Sec. 129(c)(1)(A): Allow assessments of individuals' skills conducted by businesses or other partners to meet the WIOA requirement for assessment.

Businesses, nonprofit organizations, and other partners are at times best suited to conduct skills assessments. These prior assessments should be allowable as a WIOA assessment requirement to avoid needless duplication of services.

- i. The use of prior assessments provision states "A one-stop operator or one-stop partner shall not be required to conduct a new interview, evaluation, or assessment of a participant under subparagraph (A)(xii) if the one-stop operator or one-stop partner determines that it is appropriate to use a recent interview, evaluation, or assessment of the participant conducted pursuant to another education or training program." We recommend prior assessments that are conducted by an employer, workforce provider, or community-based organization be considered allowable under this definition. To maximize the use of assessments conducted by these parties, we encourage the development of a process in which the assessing organization shares the jobseeker's assessment, and corresponding paperwork, with the appropriate one-stop center staff.
- ii. Additionally, we recommend a "prior assessment" to be defined as "an assessment that occurred within the past twelve months to determine an individual's educational attainment, skill(s) level, soft skills, or services required" as described in Section 134(b)(2).

G. Recommendation Sec 134 (c)(2)(A): Allow LWIAs to determine provision of career services.

The elimination of the sequence of services and the intent to streamline a jobseeker customer's experience is a welcome change which will enable LWIAs to continue meeting the needs of its customers.

- i. We recommend USDOL regulations reflect an LWIA's ability to assess the need for and deliver career services. For example, the regulations could state, "To be consistent with the goal of maximizing customer access to the services needed for successful skills development and employment attainment and retention, LWIAs shall determine the timing, duration, and appropriate mix of services for participants."
- ii. Sec. 134 (c)(2)(A)(x) and (xi) "Career Services."
Partnership is a critical element to the success of high performing LWIAs. Throughout the "Career Services" section of the law, there are references to "assistance" provided by the one-stop or its contractor as it relates to financial aid eligibility and filing for unemployment compensation. We recommend "assistance" for this provision of WIOA, be defined as, "Providing an eligible jobseeker with information pertaining to access and/or direct assistance from the one-stop staff or partner staff, and/or referral to a qualified partner organization for direct assistance." Additionally, such "assistance" should be the same for both adult and youth programs.

iii. Sec. 134 (c)(2)(A)(xxi)(l)(aa) referring to “use of diagnostic testing.”

Diagnostic testing can be a valuable tool to understand an individual’s skills proficiency and job readiness. Due to the variability of jobseeker needs (i.e. barriers to employment, soft skills, literacy/numeracy, and/or industry-required skills), we believe that maximum flexibility should be provided to LWIAs, and partners, in selecting an appropriate diagnostic tool to assess a jobseeker’s readiness and skills level. To ensure that State and Local Investment Workforce Areas retain maximum flexibility, we recommend USDOL provide no further guidance.

iv. Sec. 134 (c)(3) “Training Services” in reference to local flexibility.”

LWIAs and providers are best positioned to collect and understand local labor market information and intelligence, build employer relationships, and provide effective training in response to the current and future labor market needs. We strongly recommend that local flexibility be preserved as it relates to Sec. 34 (c)(3) (D-H), to determine the appropriate availability and mix of training services that are offered locally to individuals and employers.

Recommendation 4

Maximize local flexibility to transition and operationalize WIOA in a manner that best positions core programs for high performance and accountability.

A. Recommendation Sec. 116(g)(2)(A): Embrace system alignment while preserving the distinct role each program plays in the workforce system and their respective performance.

We value system alignment and ensuring programs across all titles are held accountable to high and consistent performance standards. Collective evaluation and sanctioning, however, may have disproportionate impact to an LWIA's ability to maintain a consistency of high-quality services for core program customers.

i. In the event a core program fails to meet their negotiated numeric performance goal for three consecutive years, and state sanctions are triggered, we recommend USDOL provide specific guidance to the state DOL restricting the sanction to only apply to the program which failed so as not to penalize high performing programs. Regulations could state, "Each of the four core programs are individually responsible for achieving their negotiated numeric performance targets, and any penalties incurred by the state due to performance failure, shall be restricted to the underperforming program in the specific LWIA. In instances where a performance target is shared across one or more core programs in a LWIA, a state penalty shall apply proportionately to each core program's underperformance."

ii. We recommend, to the extent possible, that performance failure be defined and codified clearly by the state to the LWIAs. For example, we encourage “performance failure” to be defined as “not meeting the agreed upon performance measures by at least 80%.” And, if possible, sanction triggers could be delayed where the state did not provide technical assistance or corrective action support after the first year of performance failure.

B. Recommendation Sec. 116(d): States are best positioned to capture and produce comprehensive performance reports, including those required for ETPL.

i. In the spirit of reducing the reporting burdens and requirements for LWIAs, we urge USDOL to keep states responsible (as stated in Sec. 116) for producing and providing publicly available reports, by local workforce area, relating to LWIA performance, performance information and program cost on eligible training providers of training, and statewide availability of supportive services (available through state agencies). This will improve the consistency of reporting, and present choices to customers who may utilize services under WIOA in an easy to understand format.

C. Recommendation Sec. 116(b)(4)(B): Engage LWIAs in creation of Objective Statistical Model.

i. We recommend USDOL require LWIAs be included in the development process of the Objective Statistical Model. We strongly believe that the model must take into account local expertise for how to best serve participants with varied barriers to employment by including LWIAs in the development process. As such, USDOL regulations could state the following, "Per section 116(b)(4)(B), Local Boards shall be included in the list of those required to be consulted throughout the development of the State Objective Statistical Model."

D. Recommendation Sec 121 (d)(2)(A): Seek a technical amendment that allows the designation of one-stop operators through a consortium entity, as currently allowable under WIA 121 (d)(2)(A).

In some local areas, the one-stop operator does not directly run one-stop centers. This is true in New York City where a consortium entity, allowable under WIA, acts as the one-stop operator. A competitive procurement process makes sense for the organization that runs the day-to-day operations of a one-stop center. But it is unnecessary for the operator and would lead to greater costs.

i. We recommend USDOL seek a technical amendment to reinstitute the one-stop operator designation requirements allowed under WIA. The requirements, defined in WIA Section 121 (d)(2)(A), permit one-stop operators to be established “(i) through a competitive process; or (ii) in accordance with an agreement reached between the Local Board and a consortium of entities that, at a minimum, includes 3 or more of the one-stop partners described in subsection (b)(1).”

ii. Sec. 121 (e)(3) Establishment of One-Stop Delivery Systems: Co-location of Wagner Peyser Services.

A highly functional Career Center is critical to customer service. We recommend the Local Board and one-stop operators maintain flexibility regarding co-location, (i.e., management of staff, development of common performance measures for staff, etc.), but are provided with the parameters of the functional duties within the regulations. For example, responsibility for the one-stop operator, partner and stakeholder engagement, meeting federal/state/local performance standards, and activities related to career and business services.

E. Recommendation Sec 121(e)(4): Provide local flexibility in implementing One-Stop Delivery System identifier.

We recognize the importance of developing a nationwide one-stop delivery system identifier to best serve jobseekers.

i. We recommend USDOL provide limited guidance in implementing the system identifier requirements. The identifier should seamlessly integrate into existing system identifiers and not create budget or operational burden for integrating one-stop delivery system identifier into existing one-stop centers. This would allow LWIAs to maximize funding directed to program and administrative services and limit unnecessary costs required to change existing related identifier materials.

F. Recommendation: Provide flexibility to best enable providers to serve jobseekers over longer service periods.

WIOA establishes a longer service period than what previously existed under WIA. The follow up period for services, referred to as Year 2, now includes the second and fourth quarter reporting for all core programs.

i. We recommend USDOL decrease the required obligation threshold in Year 1 of services from 80%, as outlined in USDOL Employment and Training Administration's Fund Utilization Standard Section CFR 667.150, to 70% in order to provide more funding for Year 2 follow-up services. Regulations could state as follows, "The Year 1 obligation minimum threshold shall be 70% of a state's annual program allocation."

ii. We recommend USDOL establish a six month timeframe from the required reporting period for LWIAs to access state wage reporting data and compile their performance report(s). In the event that reporting is delayed, due to a lag in transferring wage data from the state, LWIAs should not be penalized for late or incomplete reporting.

G. Recommendation Sec. 121 (c)(2)(A)(ii)(I): Allow LWIAs to define in-kind contributions fairly evaluated in MoU's based on local market conditions.

i. We recommend that LWIAs are authorized to define in kind contributions fairly evaluated through passage of Local Board resolution so that current local conditions are considered when determining allowances for in-kind contributions to one-stop cost-share and infrastructure costs. Regulations could state, "Local Boards may define the parameters of fairly evaluated in-kind contributions, to provide a stable and equitable funding stream to provide for ongoing one-stop delivery system operations."

H. Recommendation Sec. 107 (b)(4): Allow LWIAs flexibility in establishing Board committee structure and roles.

i. We strongly believe that WIOA programs and the one-stop delivery system and associated services should be accessible to all jobseekers and employers, including individuals with disabilities. As it relates to a Local Board's committee structure, we feel strongly that the Local Board should have the flexibility to establish the committees they believe necessary to respond to local needs, and are in alignment with board member expertise. Additionally, Local Boards should maintain the responsibility to determine the size of committees, frequency of meetings, the roles and responsibilities. We recommend USDOL limit further criteria or requirements for Local Board committee structure and roles.

Recommendation 5	Prepare LWIAs for WIOA transition through a phased-in approach to fulfill WIOA enactment.
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A. Recommendation: Phased in transition for early implementation states.

Early implementation will allow states to gain familiarity with the requirements of WIOA however, it should be recognized that the full transition to WIOA, under an expedited timeline, will require flexibility from USDOL.

i. We recommend USDOL allow for MoU's already in place at the enactment of WIOA to continue to be in operation for the first three years of WIOA.

ii. Provide technical assistance and funding for required integration for a period of at least of 2 years. Technical assistance and funding should be focused on new requirements under WIOA, such as program coordination and integration, the development of career pathways and industry partnerships, the establishment of new performance measures such as employer engagement and year 2 outcomes and cross-training of Title I, II, and IV program and administrative staff so that all core programs are equipped to successfully implement WIOA.

iii. USDOL should provide states and LWIAs with learning and networking opportunities on WIOA best practices and share them with workforce entities across the country. This should be done through bi-annual webinars facilitated by USDOL.

B. Recommendation Sec. 103 (a): Allow LWIAs to adequately prepare for Unified and Combined State Plan implementation.

We embrace the potential to combine additional program services to best serve jobseekers and businesses. However, a transitional period is necessary before this is potentially imposed.

i. To the extent practicable, where a state prompts a Combined State Plan, and the LWIA is not adequately prepared due to continued focus and priority of transitioning from WIA to WIOA, LWIAs that do not participate in the Combined State Plan should not be penalized.

Recommendation 6	Allow youth workforce activities to respond to the multitude of needs amongst youth.
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A. Recommendation Sec. 129(a)(1): Preserve new and substantial diversity for eligible youth and youth activities.

i. We welcome the expansion of definition for eligible out-of-school youth, to include criteria not solely dependent on income, as this recognizes the life circumstances that can impede success for youth in educational, work-training or employment programs. We recommend USDOL not provide additional guidance or criteria for eligible out-of-school youth so that the most vulnerable, across a spectrum of needs and circumstances, can be served through WIOA youth programs.

B. Recommendation Sec. 129 (c)(3)(ii)(C)(4): Allow required 20% youth work experience funding to be used for wages, program costs and administrative costs.

We embrace WIOA's focus on linking young people to occupational skills and work experience while highlighting the developmental needs of each participant.

i. In regards to funding youth programs, we recommend USDOL allow funding required to be spent on youth workforce experience include allowable costs related to wages, program costs and administrative costs. For example, internship supports can cost \$2500 per participant. This will allow providers to best serve young people under the expanded program service period under WIOA. Regulations could state, "The required 20% youth work experience shall allow for wages, program costs, and administrative costs."