

**New York City's Comments on the Workforce Innovation and Opportunity Act (WIOA)
Notices of Proposed Rulemaking (NPRMs)**

New York City respectfully submits this set of comments on the draft Workforce Innovation and Opportunity Act (WIOA) regulations published by the U.S. Departments of Labor and Education in response to:

- Docket number ETA-2015-0001-0001, for Regulatory Information Number (RIN) 1205-AB73
- Docket number ETA-2015-0002-0001, for Regulatory Information Number (RIN) 1205-AB74
- Docket number ED-2015-OCTAE-0003, for Regulatory Information Number (RIN) 1830-AA22

The City is an early adopter of several of the critical new elements contained in WIOA: career pathways, sector strategies, and industry partnerships. The City is transforming the focus of its workforce development system from connecting as many people to jobs as quickly as possible, to helping workers secure and retain stable, good-paying jobs through investments in sector-based education and training. The City is also developing industry partnerships in several priority economic sectors, working with employers to identify their labor market needs and ensure that training curricula meet those needs. In short, New York City is aggressively implementing a sector-based, demand-driven career pathways framework in alignment with WIOA. Our comments below are meant to support the City's implementation of these key elements of WIOA for the benefit of New York's workers and businesses.

Outline of Comments

- 1. The One-Stop System: Defining a Missing Role**
- 2. Governance: Leadership Role of the Workforce Development Board**
- 3. Funding Levels**
- 4. Performance Indicator Definitions**
 - a. Median Earnings for Youth and Adults
 - b. Credential Attainment
 - c. Measurable Skill Gains for Youth and Adults
 - d. Employer Effectiveness
 - e. Common Exits and Shared Indicators
- 5. Performance Indicator Implementation Timeline and Structure**
 - a. Phasing in the Indicators
 - b. Threshold Scores
 - c. Straight vs. Weighted Averages
 - d. Statistical Adjustment Model
- 6. Adult and Dislocated Worker/Youth Activities**
 - a. Career Pathways
 - b. Bridge Programs
 - c. Youth Eligibility: Definitions of High Poverty Area and Family
 - d. Incumbent Worker Definition
 - e. Pay-for-Performance Contracting

7. Adult Education

- a. Expanded Role of Adult Education
- b. Means of Demonstrating Effectiveness for Adult Education Programs
- c. English Language Acquisition Programs and Secondary Credentialing/Employment
- d. Meeting Integrated Education and Training Requirements
- e. Job Placement for English Language/Civics Participants

Comments

1. The One-Stop System: Defining a Missing Role

NPRM Section: 678.620

Recommendation: The Departments should define the role of a “system coordinator,” applicable in large local areas, that unifies a network of one-stop centers and their operators into a local system.

We argue that the various roles described in WIOA and the draft regulations – Local Workforce Development Board, one-stop operator, one-stop partner, administrative entity, fiscal agent, service provider, etc. – miss an important role that is sometimes necessary in a large, complex local area: that of a “system coordinator.” In a large, complex local area, there could be multiple one-stop operators that manage one-stop centers. But there would still be the need for an entity to unify these individual one-stop centers into a coherent system; define strategies for business development and service provision; ensure that services are offered in a high quality and consistent fashion; ensure a uniform look and feel across these centers; and ensure that services are provided equitably across a large metropolitan area. We believe there are at least three options for how this could play out in practice:

- The Local Board could take on the role of system coordinator, provided it competitively selected one-stop operators to operate one or more one-stop centers, per WIOA Section 121(d).
- The Local Board could, with the agreement of the Chief Local Elected Official, designate a local public agency or nonprofit organization affiliated with the local government as the system coordinator, provided it competitively selected one-stop operators to operate one or more one-stop centers.
- A single One-Stop Operator could still play this role.

Each of these scenarios would maintain the Local Board’s authority to establish a vision for the local workforce development system. Having these scenarios available to Local Boards in large metropolitan areas would also recognize the diversity of models for implementing WIA and WIOA. Finally, these scenarios would maintain a competition to ensure the highest quality providers are selected to operate one-stop centers. At the same time, they would still enable local areas to determine where they have the greatest capacity to manage an extensive system of one-stop centers and ensure the coordinated, equitable, and consistent delivery of high quality services to both workers and businesses.

2. Governance: Leadership Role of the Workforce Development Board

NPRM Section: 679.605

Recommendation: The Departments should affirm that the Local Board is responsible for leading the key partners in the local area in developing a vision for the workforce development system, implementing that vision, and holding local stakeholders accountable for performance.

The draft regulations suggest a strong leadership role for the Local Board: in NPRM section 679.300, the board is charged to act as a “strategic leader” and “*provide strategic and operational oversight* in collaboration with the required and additional partners and workforce stakeholders to help develop a comprehensive and high quality workforce development system in the local area.” Further, in Section 107(d) WIOA assigns a number of leadership roles to Local Boards, including to:

- “Lead efforts” to **engage with employers** in the region
- “Lead efforts” to develop and implement **career pathways**
- Convene local stakeholders to solicit their input
- Develop a **local plan** on behalf of the local area in coordination with the core programs
- **Negotiate performance levels** with the state on behalf of all the core programs

However, the legislation and the NPRMs do not clearly state the role of the Local Board as the entity ultimately responsible for the workforce system and its performance. We strongly recommend that the Departments state explicitly in the final rules that Local Boards should be responsible for the following additional activities:

- Implementing and enforcing the vision of the system
- Monitoring performance and implementing corrective action plans where necessary

Without this clarification, one could envision a scenario in which one of the core programs could enact a policy that conflicts with the overall vision of the system. For example, New York City, with the support of its Local Board, has developed a citywide model of career pathways that offers education and training services to individuals across the entire continuum of skill levels. However, hypothetically, the local Title II Adult Education agency could determine that for all of its adult literacy programs it would only target individuals with TABE reading and math scores of 11th or 12th grade in order to capture individuals close to earning their High School Equivalency. This approach would represent a direct conflict with the local area’s overall vision for career pathways. In this scenario, the Local Board should have the ability to enforce the vision of the system and insist that the Title II agency change its approach to address more of the continuum of needs in line with the local vision of career pathways.

3. Funding Levels

Recommendation: Communicate to the President and Congress that they should appropriate funding for WIOA at levels adequate to fulfill the mandates of the legislation.

WIOA requires local areas to implement a variety of major new elements in their workforce development systems, including industry partnerships, sector strategies, and career pathways. We acknowledge that the Departments have no direct control over the funding levels appropriated by the President and Congress. However, we strongly encourage the Departments to insist that the vision of the workforce development system under WIOA – and its new structural elements – requires the highest possible funding levels to be fully implemented. Specifically, the Departments should communicate the need to appropriate funds for WIOA at or above the levels recommended in the legislative text to ensure that states and local areas can meet the requirements of the legislation.

4. Performance Indicator Definitions

a. **Median Earnings for Youth and Adults**

NPRM Section: 677.155(a)(1)(iii)

Recommendation: Individuals participating in an education or training program should be excluded from the calculation of this measure.

WIOA Section 116(b)(2)(A)(iii) defines this performance indicator as “the median earnings of program participants who are in unsubsidized employment during the second quarter after exit from the program.” Not excluding those in an education or training program would penalize local areas and states for helping connect individuals to a combination of part-time work and education or training. For example, a young adult could enroll in an Out-of-School Youth program, opt to enroll in a High School Equivalency program, then work 20 hours per week and attend classes for 20 hours per week. Although this set of activities might best serve the young adult’s short and long-term needs, it would lead to lower earnings than if the individual pursued employment only—thus potentially penalizing the youth program for the individual’s part-time earnings. We thus propose that individuals participating in an education or training program be excluded from the calculation of this measure.

We further recommend that the goal for youth be set lower than the goal for adult core programs, as young adults are more likely to work fewer hours and earn a lower average wage than adult workers. The WIOA statute already stipulates that the performance levels for each measure will be negotiated separately for each of the four core programs, so this recommendation is consistent with the statute.

b. Credential Attainment

NPRM Section: 677.155(a)(1)(iv)

Recommendation: The credential attainment indicator should not be calculated as the percentage of *all* participants who earn a credential. Instead, the measure should only calculate the percentage of *participants receiving training services* who earn a credential.

WIOA incorporates a new measure, credential attainment, defined in WIOA Sec. 116(b)(2) as “the percentage of program participants who obtain a recognized postsecondary credential, or a secondary school diploma or its recognized equivalent...during participation in or within 1 year after exit from the program.” The measure would not be very meaningful if applied to *all* participants, particularly in local areas that serve a large volume of customers. For example, New York City's one-stop system serves about 160,000 customers annually. Even if one assumes that 25% of those customers would be "information only" under WIOA and not “count” towards this measure, that would still leave a denominator of 120,000 customers. By necessity, the percentage goal would be set low.

Instead, we argue that “participants” in this indicator should be only participants who receive “training services” as described in WIOA Section 134(c)(3)(D) and that this group should be the denominator for this measure.

c. Measurable Skill Gains for Youth and Adults

NPRM Section: 677.155(a)(1)(v)

Recommendation: There should be a minimum threshold of participation for a customer to reach, to be defined by Local Boards, before that customer is counted towards the measurable skill gain indicator. Given the diversity of possible education and training programs, requirements for documentation should be clear and simple, offer maximum flexibility as to what can demonstrate a skill gain, and stipulate that documentation is necessary only as back-up in the event of an audit, not to report on an outcome.

Sec. 116(b)(2)(v) of the WIOA statute describes the measurable skills gain indicator as “the percentage of program participants who, during a program year, are in an education or training program that leads to a recognized postsecondary credential or employment and who are achieving measurable skill gains toward such a credential or employment.” We argue that there should be a **threshold of participation** that a customer must reach to be factored into the performance calculation, such as the number of hours they complete. Further, Local Boards should define this threshold for their local areas. In addition, customers should only have to demonstrate progress once per Program Year, to reduce the burden on local areas to collect such documentation. Finally, customers who start an education or training program in the last quarter of the program year should be subject to the measure in the following Program Year, given that they may not be able to demonstrate measurable gains so quickly.

NPRM 681.420(a)(1) states that the framework of services for local WIA Youth programs must not only meet WIOA requirements but also per NPRM 681.420(a)(2) the Youth’s Individual Service Strategy (ISS)

should be developed and updated as needed throughout their program tenure. Under WIOA, a youth participant's ISS must now be linked to one or more indicators of performance: education or training activities or unsubsidized employment. The measurable skill gain *is* the documented progress towards the performance goal established during the Youth's initial assessment. Imposing rigid standards for skill gains would create barriers for local areas to develop creative, contextualized programs that would take into consideration an individual's unique set of skills, experience, and barriers. Such alternative learning models, especially for youth, may be the difference between success and failure. The Departments should allow maximum flexibility in documenting skill gains through a variety of methods, including tests, employer evaluations, training progress notes, consistent attendance, or other methods, for adults and especially for youth. Further, the reporting of that documentation should be kept simple. For example, program staff or an instructor could provide attestation in a case note that a customer achieved a skill gain, as long as documentation to support such a gain could be available for an audit.

The Departments in NPRM 677.155(a)(1)(v) specifically sought comments on "whether the performance targets for this indicator should be set at the indicator (i.e., measurable skill gains) or documented progress measure (e.g., attainment of high school diploma) level." This distinction is not clear. We propose that the performance target be the percentage of customers who demonstrate measurable skill gains. *Evidence of such gains can then be supported* with either information about the credential a customer attained or confirmation that a customer made measurable skill gains.

d. Employer Effectiveness

NPRM Section: 677.155(a)(1)(vi)

Recommendation: The Departments should use a combination of quantity and quality measures to assess the effectiveness of the core programs in delivering services to businesses.

Ultimately, we believe that the best way to measure the effectiveness of the core programs in serving employers is according to the combination of the quality and the quantity of the services they deliver. The repeat employer customer, proposed by the Departments, is a good proxy for the quality of the services provided, since employers would presumably use the services again only if they saw benefit in doing so. Similarly, the proposal to capture the number or percentage of employers using WIOA services in the local area makes sense as a measure of quantity. However, we propose using a slightly different measure, devised by the National Skills Coalition in its comments on the WIOA regulations: the number of workers employed across the businesses served, not the number of businesses served. This approach would take into account variations across local areas of the mix of businesses served. Further, in large cities of one million or more people, an absolute number should be used in place of percentage. For example, New York City is home to approximately 250,000 businesses that employ more than four million people, and thus percentage is less meaningful than the absolute number served.

Finally, since this measure is new, and since different core programs have different types of relationships with employers, this measure should be program specific, not a shared indicator across all core programs.

e. Common Exits and Shared Indicators

NPRM Section: 677.150(c)

Recommendation: The Departments should mandate common exits and the use of a single score for each of the six performance indicators, but only after four years of WIOA implementation.

The Departments in NPRM 677.150 seek comments on the best way to handle the “exit” of a customer who enrolls in more than one core program: whether that individual should have a separate exit date for each of the programs he or she enrolls in, or whether the customer should have a single, “common” exit. The letter and the spirit of the WIOA statutory language make it clear that the goal is shared accountability across the four core programs. We agree in principle that a common exit would make sense. For example, if a young adult were enrolled in an OSY program, and planned to earn his or her High School Equivalency through a Title II program before looking for a job, it would be logical to define his or her exit as when he or she completed the Title II program. In practice, however, this shift would require major changes in data capture in many states and local areas, changes that would require a substantial investment of time and money. Our position is that states and local areas should have four years in which to align and coordinate their data systems to be able to establish common exits.

WIOA’s statutory intent clearly is to serve customers more effectively by better coordinating and aligning the core programs. Applying the same common performance indicators to all of the core programs, with limited exceptions, is a major step. Further, the performance matrix offered by the Departments is laudable, but we think the Departments would also agree that it is complicated, as evidenced by the proposed chart in the NPRMs that contains 34 individual indicator scores and 12 average indicator scores:

Table 1. State Program Score and State Indicator Scores

Indicator/Program	Title II Adult Education	Title IV Rehabilitative Services	Title I Adults	Title I Dislocated Workers	Title I Youth	Title III Wagner - Peysner	Average Indicator Score
Employment 2nd Quarter After Exit							1
Employment 4th Quarter After Exit							2
Median Earnings 2nd Quarter After Exit							3
Credential Attainment Rate							4
Measurable Skill Gains							5
Effectiveness in Serving Employers							6
Average Program Score	7	8	9	10	11	12	-

Our position is that having common measures for each of the six core programs actually does not go far enough. In fact, we believe that, **after four years of WIOA implementation, each state and local area should report just one number for each of the indicators.** (The Departments propose this type of “shared indicator” for employer effectiveness in the preamble to NPRM 677.155(a)(1)(vi). We argue it should be applied to *each* of the six measures.) This step would simplify the measures so that each state would have six total performance measures, equivalent to the proposed six “average indicator scores,” rather than 34 individual scores and 12 average scores. This action would require even closer coordination among the core programs. Further, the performance of each core program on each indicator should still be *reported* to enable states and local areas to monitor the performance of each.

5. Performance Indicator Implementation Timeline and Structure

a. Phasing in the Indicators

NPRM Section: 677.190(d)

Recommendation: The Departments should allow states and local areas to receive baseline data for the six performance indicators prior to making performance subject to the two-year sanction timeline.

The six performance indicators in WIOA are all new measures, to varying degrees, when compared to the measures under WIA. It is critical for states and local areas to get baseline data for their performance on these measures, before they are subject to sanctions, so that they can negotiate appropriate, reasonable performance levels. The Departments stipulate in the NPRMs that Wage Record System (WRS) data will be the data source for the first three performance indicators: employed at 2nd quarter after exit, employed at 4th quarter after exit, and median earnings at 2nd quarter after exit. This makes sense, given the universal availability of this data. However, as the Departments note, there is a six-month lag for WRS data, and even at that time the records are not 100% complete. The following chart shows the quarter when data would *first* become available with the new measures, assuming that they could be *tracked* starting on July 1, 2015:

Measure	Program Year 2015				Program Year 2016			
	July to Sept 2015	Oct to Dec 2015	Jan to Mar 2016	April to June 2016	July to Sept 2016	Oct to Dec 2016	Jan to Mar 2017	April to June 2017
1. Employed at Q2	Exit		Measured		WRS Data Available			
2. Employed at Q4	Exit				Measured		WRS Data Available	
3. Median Earnings at Q2	Exit		Measured		WRS Data Available			

Given the lag in the availability of baseline data, we propose that states not be subject to sanctions until July 1, 2017 (Program Year 2017). Assuming that states will need to negotiate performance levels by the fourth quarter of Program Year 2016 for the next two program years, that would give states three quarters’ worth of baseline data for measures #1 and #3 and one quarter’s worth of measure #2. It would be unfair to subject states to the two-year performance sanction timeline until they have the opportunity to review their baseline data in order to set reasonable targets.

The chart below provides our proposal for when each performance indicator should begin to be subject to the two-year sanction timeline:

Indicator(s)	Proposed Implementation Date	Rationale
<ul style="list-style-type: none"> Employed at 2nd quarter after exit Employed at 4th quarter after exit Median earnings at 2nd quarter after exit 	Customers who exit on or after July 1, 2017	<ul style="list-style-type: none"> In line with the requirement that states negotiate two years' worth of targets at one time and the timing for the third and fourth years. Provides from one to three quarters of baseline data for states.
<ul style="list-style-type: none"> Credential attainment 	Customers who receive a training service on or after July 1, 2017 (see performance indicator definitions above)	<ul style="list-style-type: none"> Given the one year after exit stipulation of this measure, the first complete quarter of baseline data would not be available until the July to September 2016 quarter.
<ul style="list-style-type: none"> Measurable skill gains Employer effectiveness 	<ul style="list-style-type: none"> Customers who enroll in an education or training program on or after July 1, 2018 Employers that receive a service on or after July 1, 2018 	<ul style="list-style-type: none"> The Departments indicated that these measures would be "phased in." These measures will need to be defined, translated into data elements, and integrated into data collection and reporting systems. This will take a significant amount of time.

b. Threshold Scores

NPRM Section: 677.190(d)(1) and 677.190(d)(2)

Recommendation: Given that the WIOA indicators are new, we recommend that the Departments set the threshold goal at 80% for the average program scores and average indicator scores, not 90%.

The Departments propose thresholds of 90% for the average of scores across each core program ("average program scores"), 90% for the average of scores across each performance indicator (average indicator scores"), and 50% for each individual program's indicator scores. We believe the Departments should collect and review baseline data before establishing high thresholds for the average scores.

c. Straight vs. Weighted Averages

NPRM Section: 677.190(c)

Recommendation: Use a weighted average to calculate each average indicator score.

The Departments solicited comments on whether to use a weighted average or straight average for each of the six overall indicator scores (the average score on each measure taking into account the performance of each of the core programs). We recommend the Departments use a weighted average for each overall indicator score since some programs will serve a much larger number of customers eligible for an indicator than others. Although each program should be held accountable for its

performance on each measure, it is more important to consider the number of customers served, which also correlates with the costs of those services, when calculating the local area and state average scores.

d. Statistical Adjustment Model

NPRM Section: 677.170(c)

Recommendation: The individuals who participate in creating the statistical adjustment model should automatically include any chief local elected officials who represent an area of the state that comprises 5% or more of the state’s population.

WIOA includes the creation of a statistical adjustment model to take into account local conditions when setting a local area’s performance goals and when evaluating its performance at the end of a Program Year. WIOA Section 116(b)(3)(A)(viii) calls upon the Departments to consult with a variety of representatives from each state in developing the model. Such representatives can include representatives of states and political subdivisions, business and industry, employees, and others. We recommend the Departments stipulate that “political subdivisions” must at the very least include Chief Local Elected Officials (CLEOs) who represent an area of a state that comprises 5% or more of the state’s population. We believe CLEOs possess an intimate knowledge of the local economic conditions, characteristics of participants, and additional factors that should be considered when making adjustments to the model. If implemented, this would likely include chief local elected officials from cities across the country, such as New York City, San Antonio, Indianapolis, and Phoenix.

In addition, we recommend the Departments explicitly add two factors of local economic conditions in addition to those identified in WIOA Section 116(b)(3)(A)(v)(II)(aa): the minimum wage applicable to the local area, and the unemployment rate for young people aged 16-24. A number of research studies specifically detail the high rates of youth unemployment nationwide. For that reason, the unemployment rate of 16 to 24 year olds should be considered separately for the purposes of determining goals for youth.

Proposed NPRM 677.170(d)(2)-(3) notes that the model will be applied twice in the Program Year, including to serve as a framework for negotiating performance targets for the upcoming Program Year and at the end of the Program Year to adjust expectations for performance levels based on actual circumstances. The adjustments made at the end of the Program Year should not increase the performance targets because it would not allow states sufficient time to make course corrections.

e. Pay-for-Performance Contracting

NRPM Section: 677.160 (a)(10)

Recommendation: The Departments should define “pay-for-performance” contracts as contracts in which 100% of the budget is based on achieving outcomes.

The NPRMs make numerous references to “pay-for-performance” contracts, yet never clearly define this type of contract. Given that there are additional requirements for using such contracts, as well as a 10% budget cap on their usage, it is critical for the Departments to provide a clear definition. Further, it is imperative that the Departments clearly distinguish pay-for-performance contracts from more standard “performance-based contracts,” in which service providers can earn a percentage of their total budget by reaching certain performance targets.

We recommend that the Departments use the same definition as “pay for success” contracts in which 100% of the budget is based on outcomes, to define pay-for-performance contracts. According to a [FY 2016 Federal OMB Fact Sheet](#), pay for success contracts require financing from other sources, “with the government paying *only when services generate measurable results that meet pre-specified targets*” (emphasis added).

6. Adult and Dislocated Worker/Youth Activities

a. Career Pathways

NPRM Section: 679.370

Recommendation: The Departments should explicitly give the Local Board the responsibilities of developing, implementing, and enforcing the vision of career pathways in the local area across the core programs, including establishing corrective action plans for programs not operating in concert with the vision.

WIOA Sec. 107(d) describes one of the functions of the Local Workforce Development Board as “to lead efforts in the local area to develop and implement career pathways within the local area by aligning the employment, training, education, and supportive services that are needed by adults and youth, particular individuals with barriers to employment.” In November 2014, New York City Mayor Bill de Blasio released a report entitled “One City, Working Together” that laid out the City’s vision of a workforce development system operating as a career pathways model for all New Yorkers. This vision reflected a fundamental mission shift for the system: from connecting as many New Yorkers to jobs as quickly as possible, to continuously building the skills of New Yorkers across the entire spectrum of abilities to help them increase their earnings and find good jobs with family-supporting wages. New York City plans to continue implementing this vision under WIOA. However, unless the Departments assign the Local Board certain responsibilities, this vision could be imperiled. Specifically, the Departments should enable state boards to set broad goals around career pathways and empower local

areas to determine the best approach given their local economic conditions and the demographics of their population. The Departments should state in the final rules that Local Boards are responsible for:

- Seeking input from the core programs on the vision of career pathways
- Implementing and enforcing the vision of career pathways in the local area
- Monitoring implementation of career pathways among the core programs and establishing corrective action plans where programs are not operating in concert with the vision

b. Bridge Programs

NPRM Section: 680.140

Recommendation: We strongly encourage the Departments to explicitly mention bridge programs in the final rule as an acceptable activity under WIOA and to encourage their use.

Bridge programs prepare adults and young people with limited academic or English skills to succeed in postsecondary education and training programs. Such programs “bridge the gap between the initial skills of individuals and what they need to enter and succeed in education and training programs” (Chicago Bridge Initiative). Bridge programs are not explicitly mentioned in the WIOA statute nor the NPRMs; this omission misses a critical step in the continuum of services necessary to prepare all workers for good jobs with family-supporting wages, particularly those who are basic skills deficient. Evidence suggests that these programs can be highly effective in preparing individuals with low literacy or English language skills for education or training programs. Given the priority of service under WIOA for individuals who are basic skills deficient, bridge programs could be an effective way of preparing such individuals for education and training programs. We recommend that the Departments make it clear that such programs are not only acceptable under WIOA, but encouraged. The Departments could recognize bridge programs as an acceptable type of career service.

c. Youth Eligibility: Definitions of High Poverty Area and Family

NPRM Section: 681.260

Recommendation: The Departments should add “city (or other minor civil divisions)” as another geography that local areas could opt to designate as a “high poverty area.” The Departments should also provide a definition of “family” similar to the one provided in WIA but update to include a broader diversity of family types.

As the NPRMs state in Sec. 681.260: “WIOA contains a new provision that allows for youth living in a high-poverty area to automatically meet the low-income criterion that is one of the eligibility criteria for ISY and for some OSY.” The Departments define a “high poverty area” at the level of “census tract, contiguous census tracts, or county.” We propose adding “city (or other minor civil divisions)” as another possible geography. We also propose that local areas have the flexibility to determine which areas, if any, should be designated a high poverty area for the purposes of qualifying all youth in that area as low-income.

Neither WIOA nor the draft regulations contain a definition of family, yet family is an important element of qualifying youth (and adults) as low-income. WIA, by contrast, contained a definition of family in Sec. 101(15). We recommend that the Departments provide an updated version of the WIA definition that is more inclusive of all family types, including same-sex marriages and domestic partnerships.

d. Incumbent Worker Definition

NPRM Section: 680.780

Recommendation: The Departments should not use six months as the threshold of eligibility for incumbent workers. Instead, local areas should determine the appropriate threshold.

The Department seeks comment on the appropriate amount of time an employee must have worked for the employer before being eligible for incumbent worker training. Section 680.780 states that, “to qualify as an incumbent worker, the...worker needs to...have an established employment history with the employer for 6 months or more.” Six months is the wrong threshold, for two reasons. First, if the Departments intended to align the definition with the typical “probationary” period in a new job, then six months ignores the wide range of such periods, including many organizations that use three months. Moreover, in some states, such as New York, employment is “at will” and employees are considered permanent on day one if they are not provided with an end date of their employment. This definition would also not recognize the time an individual worked at a company in a status other than as an employee, such as through a paid internship offered as a WIOA service.

Second, if the Departments intended to prevent the use of incumbent worker training as a relocation incentive, then an alternative would be to add to the definition the length of time a business had operated in a particular location, without setting the threshold on the employee.

There is an analogous section in WIOA Sec. 3(15) defining a Dislocated Worker: he or she must “have been employed for a duration sufficient to demonstrate... attachment to the workforce.” This duration is left unspecified. Further, 680.130 allows “Local Boards... [to] establish policies and procedures for one-stop operators to use in determining an individual’s eligibility as a dislocated worker,” consistent with the definition in the statute. We argue that Local Boards should be permitted similarly to define the minimum duration of employment with a company required for workers to be considered incumbent workers.

7. Adult Education

a. Expanded Role of Adult Education

NPRM Section: 463.1

Recommendation: WIOA retains and expands the purposes of the Adult Education and Family Literacy Act as established under WIA. Outside of Title II, however, there are no outcomes for adult education providers other than the Title I outcomes of employment and postsecondary education and training. We urge the Department to expand the list of adult education outcomes beyond Title II. WIOA should support additional outcomes that are relevant to the starting levels of a broader range of adult education students.

Outcomes such as demonstrated improvement of at least one literacy level are relevant to some low-level learners. **We propose that, in addition to educational gain, indicators that were part of the Adult Education and Family Literacy Act under WIA be included as allowable outcomes for WIOA.** These indicators – including such measures as attaining the skills needed to pass the US citizenship exam, becoming more involved in children’s education, and volunteering for community organizations – were “secondary outcomes” under WIA. We propose maintaining the relevance and value of these outcomes, especially for the lowest-level basic education and ELA students.

b. Means of Demonstrating Effectiveness for Adult Education Programs

NPRM Section: 463.24

Recommendation: The Department has asked for recommendations for ways programs can demonstrate effectiveness. We agree that programs should use their past performance data to establish the effectiveness of their services. We urge the Department to include quality of program infrastructure in these measurements. We also urge the Department to establish guidance to help states take into account programs’ majority participant populations – e.g., adults with low levels of literacy or limited English proficiency – in considering provider performance.

Measures of demonstrated effectiveness should include:

1. Number of years of service provision with a minimum number of three (3) years meeting required performance measures. This measure would ensure that seasoned providers with strong track records are contracted to provide services.
2. Percentage of students persisting in programming. A high rate of student persistence is a strong measure of program quality, indicating levels of participant trust, satisfaction, and success moving toward goals. “Persistence” could be measured by the percentage of students with a post-test score.
3. Percentage of students achieving academic gain in the previous three (3) program years – by measure of 1) NRS level gain, 2) a gain of at least 0.5 within NRS ABE/ASE levels, or 3) a gain of half an NRS ESL Functioning level within ELA levels. While educational gain should not be the sole measure of program effectiveness, and adult learners have many goals when they enter education programs, academic skills gain remains a key indicator of progress.

c. English Language Acquisition Programs and Secondary Credentialing/Employment

NPRM Sections: 463.31 and 463.32

Recommendation: We support the connection of English language instruction to career pathways goals, and the work of programs to provide clear pathways to academic credentials, training, and employment. The wording of the proposed rules narrows the pool of eligible program participants and does not acknowledge the educational needs of English language learners who arrive in this country with a high school credential. We urge the Department to amend the language of 463.31/463.32 to be more inclusive of potential English language learners.

Learners who have earned a high school diploma in their home countries need English language classes to develop language proficiency that will enable them to advance on a career pathway. In most cases, enrollment in occupational training or postsecondary education is contingent on English proficiency. This regulation should acknowledge the need for English language instruction to support student's forward movement on career pathways.

In addition to the language "the program of instruction must also lead to attainment of a secondary school diploma or its recognized equivalent and transition to postsecondary education or training or lead to employment," we propose the following: **"In the case of English language learners who have a high school credential, the program of instruction must lead to transition to postsecondary education or training or lead to employment."**

d. Meeting Integrated Education and Training Requirements

NPRM Section: 463.37

Recommendation: The Department has outlined the ways in which programs providing integrated education and training can meet the requirement that the three required components are "integrated." We urge the Department to add an additional measure to that list, requiring that programs coordinate with one or more Industry Partnerships that will be established by the Workforce Development Board.

Working with Industry Partnerships will support the development of relevant curricula, contextualization of programming, and creation of work-based learning opportunities that will support the integration of the three required components. Such partnerships are critical to the building of a strong career pathway for program participants.

e. Job Placement and Workforce Training for Integrated English Literacy and Civics Education

NPRM Section: 463.70 and 463.73

Recommendation: The Department has outlined the need for programs offering English Language / Civics programming to integrate workforce services. We urge the Department to a) maintain language consistent with section 463.33 and the definition of Integrated English Literacy and Civics Education

programs and b) clarify the role of workforce service providers in job preparation and placement activities to ensure stronger workforce outcomes for participants.

The Integrated English Literacy and Civics Education (IELCE) program is defined in WIOA as programming designed to “increase access to English literacy programs in which civics education takes place; these civics programs emphasize contextualized instruction on the rights and responsibilities of citizenship, naturalization procedures, civic participation, and US history and government to help students acquire the skills and knowledge they will need to become active and informed parents, workers, and community members.” Section 463.33 of the Department’s proposed regulations repeats this definition, stating that program services “shall include instruction in literacy and English language acquisition and instruction on the rights and responsibilities of citizenship and civic participation, and **may** include workforce training.”

Sections 463.70 and 463.73, however, state that IELCE programs **must** be delivered in combination with integrated education and training services. The change in language dictates a restrictive service delivery model that would prevent states from using these program funds to support the full range of IELCE learners’ goals.

Many ELA students may not need workforce training – for example, learners requiring early language support and civic integration support, those who are self-employed or small business owners, and those preparing for naturalization exams. In addition, while many adult education programs are able to provide basic job counseling and support, few are able to fully prepare learners for and place them in unsubsidized employment. Partnership with the workforce system is needed to furnish access to a wider set of service options, helping to create a true career pathway for program participants. Workforce service providers have the expertise and staffing to more effectively meet learners’ needs.

We recommend that Department uphold the law’s clear statement that IELCE services **may** rather than **must** include integrated education and training services. Further, we recommend the following changes (in bold): “Eligible providers [...] **may** provide services that [...] are designed to **(1) Provide adult English language learners with contextualized work readiness instruction; and (2) integrate programming with local workforce development system and service providers to prepare learners for, and place such adults in, unsubsidized employment in in-demand industries and occupations that lead to economic self-sufficiency.**”

In addition, under WIA, a provision for “employment guidance” was established as a measure that would meet the requirement of providing services that prepare adults for employment. **We ask that a similar provision be established for WIOA.**