QUICK REVIEW: WORKFORCE INNOVATION & OPPORTUNITY ACT

As of July 20, 2016

In an effort to provide our membership with a quick review of the “Final Rule,” we have honed in on the major areas of concern relating to the Workforce Innovation and Opportunity Act (WIOA). The PA Workforce Development Association (PWDA) partnered with the California Workforce Association, National Association of Workforce Boards and New York Association of Training and Employment Professionals, to compile this brief look at what is contained in the lengthy final rule.

To review the Final Rule and the associated materials provided by the federal government, visit: https://www.doleta.gov/WIOA/

Final Rules Referenced:
- U.S. DOL Final Rule – WIOA Department of Labor Only Final Rule

The WIOA Final Rules did not add regulatory language regarding the following topics:
- Sector Partnerships
  - DOL states that details of how partnerships are structured and operate are best left to local WDBs with agency guidance as they are in a better position to know the individual needs of a local area.
  - DOL will issue further guidance and technical assistance.
  - The department will collect and disseminate best practices.
- Career Pathways
  - Additional multi-agency guidance will be released in the future.
- Priority of Service

ONE-STOP OPERATOR PROCUREMENT

Issues of Concern: Have there been changes to loosen the requirements for “competitive selection” of One-Stop Operators? What is the role of the One-Stop Operator?


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“It is the conclusion of the department that the requirement to use a competitive process for the selection of the one-stop operator is required by statute, as is the requirement for continuous improvement through evaluation of operator performance and regularly scheduled competitions.”

- Operators must be selected and operating the center(s) by July 1, 2017. By 90 days after the final rule, every local WDB must demonstrate it is taking steps to prepare for competition of its one-stop operator. This demonstration may include, but is not limited to, market research, requests for information, and conducting a cost and price analysis (DOL/DOE p. 417).
- Local competition must occur at least every four years (state and local workforce boards may require procurements more frequently)
- Competitive process must follow local procurement policies and procedures and the principles of competitive procurement in the Uniform Guidance at 2 CFR 200.318 through 200.326.
- All references to “noncompetitive proposals” in the Uniform Guidance at 2 CFR 200.320 will be read as “sole source procurement,” and entities must prepare written documentation explaining the determination concerning the nature of the competitive process to be followed in selecting a one-stop operator. The explanation must include a demonstration that sufficient market research and outreach was conducted to justify sole source selection.
- State procurement policies may include additional procurement methods beyond those included in the Uniform Guidance, including sole source procurement.
- The one-stop operator must be clearly defined in the “competition”. One stop operators may coordinate the service delivery of required one-stop partners and service providers. Local WDBs may establish additional roles of the one-stop operator, including but not limited to: coordinating service providers across the one-stop delivery system; being the primary provider of services within the center; providing some of the services within the center; or coordinating service delivery in a multi-center area, which may include affiliated sites.
- A one-stop operator may not perform the following functions:
  - convene system stakeholders to assist in the development of the local plan;
  - prepare and submit local plans (as required under sec. 107 of WIOA);
  - be responsible for oversight of itself;
  - manage or significantly participate in the competitive selection process for one-stop operators;
  - select or terminate one-stop operators, career services and youth providers;
  - negotiate local performance accountability measures; or
  - develop and submit budget for activities of the local WDB.
- An entity serving as a one-stop operator that also serves a different role within the one-stop delivery system, may perform some or all of these functions when it is acting in its other role, if it has established sufficient firewalls and conflict of interest policies and procedures. The policies and procedures must conform to the specifications in §679.430.

WDBs Serving as the One-Stop Operator

- Unlike under WIA, there is no designation or certification separate from the competitive selection requirements of any entity as a one-stop operator, including a local WDB. However,
WIOA sec.107 (g)(2) does require an additional step beyond the competitive selection if the outcome of the competitive selection process is the selection of the local WDB as the one-stop operator. In this case, the governor and CEO must approve the selection of the WDB as the one-stop operator (DOL/DOE p. 378).

- Local WDB personnel are permitted to staff one-stop operators and service providers with the agreement of the CEO and governor as long as the local WDB is selected in accordance with the requirements of the regulations and proper firewalls are in place (p. 387-388).
- The competitive processes outlined in the Uniform Guidance are applicable to procurement transactions with a contractor and not to a sub-awardee such as an adult or dislocated worker service provider. It is when WIOA requires competitive procurement process such as with the one-stop operators and youth service providers that states and local WDBs must adhere to such requirements (p. 393).
- Career services are provided by the various partner programs participating in the one-stop center, the details of which are set out and agreed upon in the MOU. These partners are not required to be procured in a competitive process under WIOA, but they may be under state or local procurement policies (p. 395).

**LOCAL AREA DESIGNATION**

**Issues of Concern**: What are the procedural requirements for initial and subsequent designation of local areas?


DOL has added a detailed timeframe and metrics for how the governor is to determine initial and subsequent designation. Initial Designation applies to PY 2016 and PY 2017. No determination of subsequent designation may be made before the conclusion of PY 2017.

**Initial Designation** – Applies to PY 2016 and PY 2017 (July 1, 2016-June 30, 2017 and July 1, 2017-June 30, 2018)

- **Performed Successfully** - LWDBs met or exceeded the levels of performance the governor negotiated with LWDBs and CEOs under WIA. Limited to measures for “the last 2 full program years before enactment of WIOA...” (July 1, 2012-June 30, 2013 and July 1, 2013-June 30, 2014)

- **Sustained Fiscal Integrity** - The Secretary has not made a formal determination that either the grant recipient or the administrative entity of the area misexpended funds due to willful disregard of the requirements of the provision involved, gross negligence, or failure to comply with accepted standards of administration for the 2-year period preceding the determination.

**Subsequent Designation (Part 1)** – Decisions “made at the conclusion of PY 2017” (June 30, 2018)

- **Performed Successfully** - Finding must be limited to having met or exceeded the negotiated levels for the following:
  - Employment rate at 2nd quarter after exit

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Median earnings

- **Sustained Fiscal Integrity** - The Secretary has not made a formal determination that either the grant recipient or the administrative entity of the area misexpended funds due to willful disregard of the requirements of the provision involved, gross negligence, or failure to comply with accepted standards of administration for the 2-year period preceding the determination.

**Subsequent Designation (Part 2)** – Decisions “made at the conclusion of PY 2018 (June 30, 2019 or thereafter)

- **Performed Successfully** - Findings may be based on having met or exceeded *all six primary indicators*
- **Sustained Fiscal Integrity** - The Secretary has not made a formal determination that either the grant recipient or the administrative entity of the area misexpended funds due to willful disregard of the requirements of the provision involved, gross negligence, or failure to comply with accepted standards of administration for the 2-year period preceding the determination.

**Issues of Concern**: What actions or procedures must the governor carryout to adequately consult with local areas?

**Quick Review**: Located in U.S. DOL Final Rule; Sections 675, 679.230, 679.250 and 679.290

- DOL has added a definition of consultation to the regulatory definitions in part 675 of the Final Rule. *The term “consultation” means a process that “constitutes a robust conversation in which all parties are given opportunity to share their thoughts and opinions. Written correspondence or other simple communication methods do not constitute consultation. This definition applies to all provisions that use the term unless otherwise specified”* (DOL p. 96-97).
- The governor has the discretion to establish the process and procedures to solicit comments determined to be appropriate. However, the governor must provide for a wide-reaching, inclusive process that allows **sufficient time for stakeholders to provide substantive comments** that will enable the governor to receive **meaningful feedback from all interested stakeholders**, ensuring that the governor is able to consider all relevant information, data and opinions before making a decision to designate or redesignate a local area (DOL p. 97).
- States are not allowed **to make unilateral decisions regarding subsequent designations**. After the period of initial designation, if the chief local elected official (CLEO) and local WDB in an area submit a request for subsequent designation, the governor must approve the request if the following criteria are met for the two most recent program years of initial designation:
  1. The local area performed successfully;
  2. The local area sustained fiscal integrity; and
  3. In the case of a local area also being a planning region, the local area met the regional planning requirements described in WIOA sec.106(c)(1).

**Issues of Concern**: What is the appeals process for denial of initial and subsequent designation of a local area?

**Quick Review**: Located in U.S. DOL Final Rule; Sections 679.250, 683.630, 683.640

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• The appeals process must be included in the state plan. The process must include due process procedures which provide expeditious appeal to the state WDB. These procedures must provide an opportunity for a hearing and prescribe appropriate time limits to ensure prompt resolution of the appeal. If the appeal to the state WDB does not result in designation the appellant may request review by the US DOL secretary (DOL p. 1207-1208).
  o PA state plan does not currently provide for an appeals process because the state “maintained local area designations... however, an appeal process will be provided for through policy should the commonwealth re-designate local areas” (PA state plan p. 73).
• Appeals must be filed no later than 30 days after receipt of written notification of the denial from the state WDB, and must be submitted by certified mail, return receipt requested, to the USDOL secretary. A copy of the appeal must be simultaneously provided to the state WDB.
• The appellant must establish that it was not accorded procedural rights under the appeal process set forth in the state plan, or establish that it meets the requirements for designation in WIOA sec. 106(b)(2) or 106(b)(3) and § 679.250 of this chapter.
• If the secretary determines that the appellant has met its burden of establishing that it was not accorded procedural rights under the appeal process set forth in the state plan, or that it meets the requirements for designation in WIOA sec. 106(b)(2) or 106(b)(3) and § 679.250 of this chapter, the secretary may require that the area be designated as a local area. In making this determination, the secretary may consider any comments submitted by the state WDB in response to the appeal. The Secretary must issue a written decision to the governor and the appellant (DOL p. 1209-1210).

MEMORANDUMS OF UNDERSTANDING FOR ONE-STOP PARTNERS

Issues of Concern: What is role and what is required to be included in the mandated partner Memorandums of Understanding (MOU) between local areas and mandated partners? Is there clarification on cost allocation?

Quick Review: Located in U.S. DOL and U.S. DOE Final Rule Sections 677.420 – 678.720

• Under WIOA, each “mandated” partner must:
  o Provide access to its programs or activities through the one-stop delivery system in addition to any other appropriate locations;
  o Use a portion of funds made available to the partner’s program, to the extent consistent with the federal law authorizing the partner's program and with Federal cost principles in 2 CFR parts 200 and 2900 with the purpose of providing applicable career services and to work collaboratively with the state and local WDBs to establish and maintain the one-stop delivery system.
  o Enter into a local Memorandum of Understanding with local workforce boards relating to the operation and delivery of services in the career center system.
  o Participate on state and local boards or committees as required.
• The “Memorandum of Understanding” (MOU) is:

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A locally negotiated agreement between local workforce boards, chief elected official(s) and the one-stop partners relating to the operation of the one-stop delivery system in the local area that occurs every 3 years. For partners that span multiple local areas, a single joint MOU may be developed across a region.

At a minimum, the local MOU must include:

- A description of services to be provided through the one-stop delivery system, including the manner in which the services will be coordinated and delivered through the system;
- Agreement on funding the costs of the services and the operating costs of the system, including: (i) Funding of infrastructure costs of one-stop centers in accordance with §678.700 through §678.755; and (ii) Funding of the shared services and operating costs of the one-stop delivery system described in §678.760 (see also: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200);
- Methods for referring individuals between the one-stop operators and partners for appropriate services and activities;
- Methods to ensure that the needs of workers, youth and individuals with barriers to employment, including individuals with disabilities, are addressed in providing access to services, including access to technology and materials that are available through the one-stop delivery system;
- The duration of the MOU and procedures for amending it; and
- Assurances that each MOU will be reviewed, and if substantial changes have occurred, renewed not less than once every 3-year period to ensure appropriate funding and delivery of services.

Infrastructure costs of one-stop centers are non-personnel costs necessary for the general operation of the one-stop center, including:

- Rental of the facilities;
- Utilities and maintenance;
- Equipment (including assessment-related products and assistive technology for individuals with disabilities); and
- Technology to facilitate access to the one-stop center, including technology used for the center’s planning and outreach activities.

Cash, non-cash and third-party in-kind contributions may be provided by one-stop partners to cover their proportionate share of infrastructure costs.

- Cash contributions are cash funds provided to the local WDB or its designee by one-stop partners, either directly or by an interagency transfer.
- Non-cash contributions (must be valued consistent with 2 CFR 200.306) are comprised of (i) Expenditures incurred by one-stop partners on behalf of the one-stop center; and (ii) Non-cash contributions or goods or services contributed by a partner program and used by the one-stop center.

The local workforce board, chief elected officials and one-stop partners agree to amounts and methods of calculating the amounts each partner will contribute for one-
stop infrastructure funding, include the infrastructure funding terms in the MOU, and sign the MOU.

- Further guidance will be provided regarding Title II partner infrastructure cost sharing.

**Issues of Concern:** PWDA recommended that DOL provide a cost allocation plan and MOU terms that will go into effect if the state is unwilling or unable to negotiate terms with a local area or is negligent in paying their portion of the cost.


**Issues of Concern:** Clarification is needed for what steps have to be taken before the “secondary option” of using program cost limits goes into effect. It is crucial for local boards to clearly understand the process so there is no confusion about when the “second option” would be enforced.

**Quick Review:** Located in U.S. DOL and U.S. DOE Final Rule; Sections 678.735 -678.737

- The original §678.735 ("How are partner contributions determined in the state one stop funding mechanism?") has been broken up into four separate sections and considerably expanded to provide more assistance in explaining how the process of the “secondary option” will work. Section 678.735 now covers the governor’s determination of the one-stop infrastructure budget under the state funding mechanism. This includes a requirement for the local WDB to provide the governor with all pertinent materials from the failed local negotiations (§ 678.735(a)), and provisions for a governor adopting a budget that was agreed upon at the local level (§ 678.735(b)(1) and (2)), as well as for situations when the adoption of such a budget would not be appropriate or is impossible because one was never locally agreed upon (§ 678.735(b)(3)). In the case of the latter situation, the governor must use the formula created by the state WDB for determining the budget, as is described in §678.745 (DOL/DOE p. 465)

- In addition to the methodology determined in §678.736, section 678.737(b)(2) states that the governor must take into account a number of factors, including:
  - the costs of administration of the one-stop delivery system for purposes not related to one-stop centers for each partner;
  - costs associated with maintaining the Local WDB or information technology systems; as well as the statutory requirements for each partner program;
  - all other applicable legal requirements; and
  - the partner program’s ability to fulfill such requirements.

- The governor may also take into account the extent to which proportionate shares were agreed upon in the failed local negotiations as well as any other elements of the negotiation process provided to the governor per § 678.735(a) (DOL/DOE p. 465-466).

**Issues of Concern:** Regulations should provide a “fail-safe” for local areas in the event that the state is not negotiating in good faith, fails to meet the MOU or consortia requirements, and to equitably resolve MOU disputes.
• The departments are not authorized by WIOA to implement a “fail safe” plan as PWDA suggested. WIOA and the Joint WIOA Final Rule (at §678.750) require the governor to have an appeals process for the state funding mechanism that would allow one-stop partners to appeal a governor’s funding determination. In addition, 20 CFR 683.600 of the DOL WIOA Final Rule would include local WDBs and CEOs as “other interested parties” that may file grievances under the state-established procedures required by WIOA sec. 181(c)(1). (DOL/DOE p. 437).

WAGNER-PEYSER STAFF SUPERVISION IN ONE-STOP CENTERS

Issues of Concern: Under WIOA, Wagner Peyser staff are required to be co-located with WIOA-funded staff to aide in the seamless delivery of services. Is there any clarification on the interaction with WIOA-funded customers and/or overarching supervision of Wagner Peyser staff in the one-stop career centers?

Quick Review: Located in U.S. DOL Final Rule; Section 652.218 and U.S. DOL/U.S. DOE Final Rule; Sections 678.500

• Overall, no regulatory language was made. However, the one-stop delivery system envisions a partnership in which Wagner-Peyser Act labor exchange services are coordinated with other activities provided by other partners in a one-stop setting.
• It is expected that as part of the local mandated partner Memorandum of Understanding with Wagner Peyser, staff guidance regarding the provision of labor exchange services, in particular those that align and overlap with WIOA career services, are outlined.
• Personnel matters, including compensation, personnel actions, terms and conditions of employment, performance appraisals, and accountability of state merit staff employees funded under the Wagner-Peyser Act, remain under the authority of the state workforce agency. The guidance given to employees must be consistent with the provisions of the Wagner-Peyser Act, the local Memorandum of Understanding, and applicable collective bargaining agreements.

AMERICAN JOB CENTER RE-BRANDING

Issues of Concern: What is the timeline for implementation of “American Job Center” rebranding? How should it be implemented? Who will pay for the implementation?

Quick Review: Located in U.S. DOL/U.S. DOE Final Rule; Sections 678.900

• One-stop centers are required, within 90 days of the Final Rule publication, to update all “primary electronic resources” with either:
  o “American Job Center” identifier
  o One-stop centers that want to use their existing name followed by a tagline may use their name along with “a proud partner of the American Job Center network”
• Any new products and materials printed, purchased or created after [90 days from the publication of this Final Rule] must comply with the new branding requirements.
• All other branding must be updated by July 1, 2017, including activities, physical products and signage. However, the Departments will not object to use of any materials lacking the branding

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that were printed, purchased, or created before this initial deadline until supplies are exhausted, regardless of the final implementation date of July 1, 2017.

- DOL and DOE will issue further guidance and have developed a style guide to aide in the transition found here: [https://www.dol.gov/ajc/](https://www.dol.gov/ajc/)

### WORK EXPERIENCE FOR YOUTH

**Issues of Concern:** How is “work experience” defined and is there clarification on the academic and occupational education component of work experiences? Are youth able to access Individual Training Accounts?

**Quick Review:** Located in U.S. DOL Final Rule; Sections 681.590 – 681.600

- The types of work experiences include the following categories:
  - Summer employment opportunities and other employment opportunities available throughout the school year;
  - Pre-apprenticeship programs;
  - Internships and job shadowing; and
  - On-the-job training (OJT) opportunities as defined in WIOA sec. 3(44) and in § 680.700
- §681.600 clarifies that the educational component (relating to “academic and occupation education”) may occur concurrently or sequentially with the work experience and that the academic and occupational education may occur inside or outside the work site. The Department does not have any requirement about who provides the academic and occupational education, and such education may be provided by the employer. States and local areas have the flexibility to decide who provides the education.
- The Individual Training Account (ITA) language was expanded to allow all out-of-school youth ages 16-24, access to ITAs.
- DOL has added §681.590(b), which describes the types of expenditures that count toward the work experience minimum expenditure requirement and how to calculate the minimum expenditure requirement (DOL p. 428).
  - Local WIOA youth programs must track program funds spent on paid and unpaid work experiences, including wages and staff costs for the development and management of work experiences, and report such expenditures as part of the local WIOA youth financial reporting. The percentage of funds spent on work experience is calculated based on the total local area youth funds expended for work experience rather than calculated separately for ISY and OSY. Local area administrative costs are not subject to the 20 percent minimum work experience expenditure requirement.

### IN-SCHOOL YOUTH & OUT-OF-SCHOOL YOUTH ELIGIBILITY

**Issues of Concern:** For ISY and OSY, what is considered a “school”? Can “low-income” be clarified?

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Quick Review: Located in U.S. DOL Final Rule; Sections 681.230, 681.250

In-School Youth (ISY)

- ISY must be 16-21 (at time of enrollment youth may receive services after age 21 if they are enrolled at 21) and “attending school,” including secondary or postsecondary school, be low-income, and meet one or more of a list of eight criteria defined in WIOA.
- All ISY must be low income, with the exception of up to 5% (who meet all other eligibility requirements). The up to 5 percent is calculated based on all newly enrolled youth who would ordinarily be required to meet the low-income criteria in a given program year.
- For ISY with a disability, the youth’s own income rather than his or her family’s income must meet the low-income definition and not exceed the higher of the poverty line or 70 percent of the lower living standard income level.

Out-of-School Youth (OSY)

- OSY must be 16-24. ONLY youth who are the recipient of a secondary school diploma or its recognized equivalent and are either basic skills deficient or an English language learner and youth who require additional assistance to enter or complete an educational program or to secure or hold employment must be low income. Youth with disabilities, pregnant youth, foster care youth, and offenders do not need to be low income.
- Youth enrolled in adult education under title II of WIOA, YouthBuild, Job Corps, high school equivalency programs and dropout re-engagement programs as additional types of programs in §681.230 that are not considered “schools” for the purposes of determining school status. In general, the applicable state law for secondary and postsecondary institutions defines “school.”

A youth who lives in a high poverty area is automatically considered to be a low-income individual. A high poverty area is a Census tract, a set of contiguous Census tracts, an American Indian Reservation, Oklahoma Tribal Statistical Area (as defined by the U.S. Census Bureau), Alaska Native Village Statistical Area or Alaska Native Regional Corporation Area, Native Hawaiian Homeland Area, or other tribal land as defined by the Secretary in guidance or county that has a poverty rate of at least 25 percent as set every 5 years using American Community Survey 5-Year data.

USE OF TECHNOLOGY

Issues of Concern: The “Use of Technology“ is included throughout the WIOA legislation. Has the final rule clarified expectations in the “use of technology”?

Quick Review: Located in U.S. DOL Final Rule; Pgs. 735 and 903; 20 CFR 678.305(d)(3)

- As it relates to Eligible Training Providers, the governor must take into account the use of technology to provide training services to under-resourced local areas like rural communities.
- Virtual Services may increase access to the range of services but cannot be considered stand alone as the only means to access services through the career centers. To meet the definition of providing sufficient access through the one-stop center, services provided through a technological “direct linkage” must be meaningful, available in a timely manner, and not simply a referral to additional services at a later date or time. While virtual services that do not meet this definition may be provided, they must supplement the access to services provided by other means and cannot stand alone as the only access provided through the one-stop center.

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PAY-FOR-PERFORMANCE CONTRACTS

Issues of Concern: How is the federal government expecting local areas to utilize pay-for-performance contracts?


- A WIOA pay-for-performance contract strategy is a specific type of performance-based contract strategy and includes:
  - Identification of workforce development problem and target populations for which a local area will pursue a WIOA Pay-for-Performance contract strategy; the outcomes the local area would hope to achieve through a pay-for-performance contract relative to baseline performance; and the acceptable cost to government associated with achieving these outcomes (local areas must conduct a feasibility study first to determine if intervention is suitable for pay-for-performance contracting);
  - A strategy for independently validating the performance outcomes achieved under each contract within the strategy prior to payment occurring;
  - The contract must include a description of how the state or local area will reallocate funds to other activities under the contract strategy in the event a service provider does not achieve performance benchmarks under a WIOA pay-for-performance contract.

- WIOA pay-for-performance contracts must be used to provide adult training services described in sec. 134(c)(3) of WIOA or youth activities described in sec. 129(c)(2) of WIOA.

- WIOA pay-for-performance contracts must specify a fixed amount that will be paid to the service provider based on the achievement of specified levels of performance on the performance outcomes in sec. 116(b)(2)(A) of WIOA for target populations within a defined timetable. Outcomes must be independently validated, as described in §683.500 and §683.510(j), prior to disbursement of funds. DOL is not prescribing what the validation must be, leaving the locals with more flexibility.

- Recognizing the high cost of the validation requirement, DOL has specified that the cost of validation does not have to be charged against the 10 percent administrative cap. If the activity would be considered programmatic under §683.215, then the cost would be subject to the caps. If the activity would be considered administrative under §683.215, it may be paid for out of the board’s usual administrative funds and is not subject to the caps. Therefore, the board would not need to specifically account for how much administrative funds are spent on these particular programs (DOL p. 165).

- WIOA pay-for-performance contracts may be entered into with eligible service providers, which may include local or national community-based organizations or intermediaries, community colleges, or other training providers that are eligible under sec. 122 or 123 of WIOA (as appropriate).

- The Secretary may issue additional guidance related to use of WIOA pay-for-performance contracts

WIOA PERFORMANCE – PRIMARY INDICATORS

Issues of Concern: Questions abound as to what the performance measures will be, how they will be negotiated, and how they will be measured.

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Quick Review: Located in U.S. DOL/U.S. DOE Final Rule; Sections 361.150-361.240

- The six primary indicators of performance for the adult and dislocated worker programs, the AEFLA program, and the VR program are:
  - The percentage of participants who are in unsubsidized employment during the second quarter after exit from the program;
  - The percentage of participants who are in unsubsidized employment during the fourth quarter after exit from the program;
  - Median earnings of participants who are in unsubsidized employment during the second quarter after exit from the program;
  - Either:
    - The percentage of those participants enrolled in an education or training program (excluding those in OJT and customized training) that attained 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.
    - A participant who has attained a secondary school diploma or its recognized equivalent is included in the percentage of participants who have attained a secondary school diploma or recognized equivalent only if the participant also is employed or is enrolled in an education or training program leading to a recognized postsecondary credential within 1 year after exit from the program;
  - The percentage of 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, defined as documented academic, technical, occupational or other forms of progress, towards such a credential or employment. Depending upon the type of education or training program, documented progress is defined as one of the following:
    - Documented achievement of at least one educational functioning level of a participant who is receiving instruction below the postsecondary education level;
    - Documented attainment of a secondary school diploma or its recognized equivalent;
    - Secondary or postsecondary transcript or report card for a sufficient number of credit hours that shows a participant is meeting the state unit's academic standards;
    - Satisfactory or better progress report towards established milestones, such as completion of OJT or completion of 1 year of an apprenticeship program or similar milestones from an employer or training provider who is providing training; or
    - Successful passage of an exam that is required for a particular occupation or progress in attaining technical or occupational skills as evidenced by trade-related benchmarks such as knowledge-based exams.

- DOL and DOE will require each state to choose two of the three approaches provided for in the Final Rule (provided below), as well as any additional measure that the governor may establish related to services to employers, with results to be included in the first WIOA annual report due in October 2017. These measures will be collected over the next couple of years as a pilot so data can be analyzed and used to create metrics (DOL/DOE p. 204-206).
  - Employer Penetration Rate – The total number of establishments that received a service or other assistance as a percentage of the total number of establishments within the area.
  - Repeat Business Customers – Total number of establishments that continue to receive services and who utilized a service in the previous three years as a percentage of the total unique business customers who have received a service in the last three years.
  - Employment Retention – Use wage records to identify whether or not a participant matched the same FEIN in the second and fourth quarters.

- Sect. 677.175(a) has been changed to allow non-wage record matches, or supplemental data, to be collected when necessary to calculate employment earnings. If the state uses supplemental information to report on the employment rate indicators, the state also must use supplemental information to report on the median earnings indicators. DOL and DOE will provide guidance on acceptable supplemental information to verify performance outcomes. (DOL/DOE p. 249).

- DOL will collect “entered employment” and “employment retention” data; however, such data will not be counted for the purpose of performance calculations, and thus will not be a basis for sanctions (DOL/DOE p. 167, 175).

- DOL and DOE revised §677.155(a)(1)(iv) to clarify that the “credential attainment” indicator only applies to participants who are or were enrolled in an education or training program (DOL/DOE p. 183).

For the youth program authorized under WIOA title I, the primary indicators are:

- Percentage of participants who are in education or training activities or in unsubsidized employment during the second quarter after exit from the program;
- Percentage of participants in education or training activities or in unsubsidized employment during the fourth quarter after exit from the program;
- Median earnings of participants who are in unsubsidized employment during the second quarter after exit from the program;
- The percentage of those participants enrolled in an education or training program (excluding those in OJT and customized training) who obtained a recognized postsecondary credential or secondary school diploma or its recognized equivalent, during participation in or within 1 year after exit from the program, except that a participant who has attained a secondary school diploma or its recognized equivalent is
included as having attained a secondary school diploma or recognized equivalent only if the participant is also employed or is enrolled in an education or training program leading to a recognized postsecondary credential within 1 year from program exit;

- The percentage of participants who during a program year are in an education or training program as described above;
- Effectiveness in serving employers as described above.

- An “objective statistical adjustment model” for performance will be developed and disseminated by the Secretaries of Labor and Education, which will be determined by a number of factors including: differences in state economic conditions and the characteristics of participants.

- Until all indicators for the core program in a local area have at least two years of complete data, the comparison of the actual results achieved to the adjusted levels of performance for each of the primary indicators only will be applied where there are at least two years of complete data for that program.

- Eligible training providers are required to report on performance for all individuals engaging in a program of study, disaggregated by race, ethnicity, sex and age. Registered apprenticeship programs are not required to submit this information but may do so voluntarily.

- **Median earnings measure for youth 677.155(d)(3):** The departments understand concerns regarding the decreased likelihood of full-time employment while enrolled in an education or training program. The departments expect the levels of performance for different programs will vary based on the results of the statistical adjustment of the performance levels for those programs. Furthermore, states will have the ability to disaggregate performance data in order to gain an understanding of the effect of including youth in performance outcomes. No change to the regulatory text is being made in response to these comments (DOL/DOE p. 180-181).

- **Supplemental Customer Service Measure 677.160(a)(9):** The departments note that WIOA allows consideration of information that is necessary to facilitate comparison of programs across states, which could potentially include the development of shared tools or surveys. No change to the regulatory text is being made in response to these comments. Further, the departments note that implementation of this provision would be accomplished through the information collection request process (DOL/DOE p. 230).

- **Requirements for Eligible Training Providers:** The departments will issue definitions on the elements required under this provision through the WIOA Joint Performance ICR in accordance with the Paperwork Reduction Act (PRA). WIOA provides specific collection requirements at sec. 116(d)(4), which includes much of the data (training program completion rates, wage rates and job placement rates), and further information as it pertains to reporting requirements for these programs can be found in the WIOA Joint Performance ICR (DOL/DOE p. 298).

- **Incarcerated Individuals** – Incarcerated individuals will not count in the employment retention, earnings, credential attainment, or effectiveness of serving employers indicators. These individuals will only be counted for performance calculation purposes in the measurable skill gains indicator (DOL/DOE p. 675).
Quick Review: Located in U.S. DOL/U.S. DOE Final Rule; Sections 361.150

Participant: A reportable individual who has received services after satisfying all applicable programmatic requirements for the provision of services, such as eligibility determination.

(2) For the Vocational Rehabilitation (VR) program, a participant is a reportable individual who has an approved and signed Individualized Plan for Employment (IPE) and has begun to receive services.

(3) For the WIOA title I youth program, a participant is a reportable individual who has satisfied all applicable program requirements for the provision of services, including eligibility determination, an objective assessment, and development of an individual service strategy, and received 1 of the 14 WIOA youth program elements identified in sec. 129(c)(2) of WIOA.

(4) The following individuals are not participants:
   a. Individuals in an Adult Education and Family Literacy Act (AEFLA) program who have not completed at least 12 contact hours
   b. Individuals who only use the self-service system.

Exit: As defined for the purpose of performance calculations, exit is the point after which a participant who has received services through any program meets the following criteria:

(1) For the adult, dislocated worker and youth programs authorized under WIOA title I, the AEFLA program authorized under WIOA title II, and the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III, exit date is the last date of service.
   a. The last day of service cannot be determined until at least 90 days have elapsed since the participant last received services;
   b. Services do not include self-service, information-only services, activities, or follow-up services.
   c. This also requires that there are no plans to provide the participant with future services.

(2) States may implement a common exit policy for all or some of the core programs as long as the core requirements are met for the common programs, and it applies to all participants. While this is optional for now, states will be required to move towards a shared point of exit in the future.

Issues of Concern: “Quality of employment” is an inherently subjective term. PWDA cautioned against using one data point (such as wage records) as a measure of “quality of employment” without taking into consideration other key factors about the quality of a job.

- Quality of employment: At this time, the departments have decided not to include such a measure because it would be too burdensome to implement a measure that would have to be developed in the absence of an existing metric. (DOL/DOE p. 173)

Other Issues

Issues of Concern: The definition of an incumbent worker as someone who has “an established employment history with the employer for six months or more” will cause an unnecessary burden on the system and the employer. Not only will there have to be more investigation into the personnel files.
of the employee (which is also a burden on the employer to produce those records), it also may prevent a worker who has been on the job fewer than six months from receiving training that may help him/her keep their job. If the point is to partner with employers and train incumbent workers to stay competitive, the regulation could make it more difficult to fund incumbent worker training.

- **Incumbent Worker Training:** The Department has decided to **retain the 6-month requirement** for incumbent workers (DOL p. 315).

**Issues of Concern:** DOL regulations need to clearly define what an administrative cost is and who incurs these costs. PWDA supported the retention of the current definition of administrative costs, as defined by the regulations specified in 20 CFR 667.220(b) under the Workforce Investment Act of 1998. PWDA recommends that DOL provide a proposed list of administrative costs to help with clarity and consistency for local planning purposes.

- **Administrative Cost Definition** 683.215(b): The departments decided to **maintain a list of administrative functions in a defined, succinct list** instead of adopting a more flexible definition because it agreed with commenters that it ensures consistency and clarity in the treatment of the expenditures for WIOA title I grant-funded activities. Section 683.215(a) provides that administrative costs are those expenditures incurred by state and local WDBs, regions, direct grant recipients, local grant subrecipients, local fiscal agents and one-stop operators for the overall management of the WIOA system and are listed among the functions enumerated in the list in §683.215(b). This definition is substantially the same as it was in WIA. The entities listed in §683.215(a) are the same entities explicitly included in the definition of administrative costs in sec. 3(1) of WIOA (DOL p. 503-505), with the exception of “regions.”

**Issues of Concern:** *What is the process used to select eligible youth service providers?*

**Quick Review:** Located in U.S. DOL Final Rule; Sections 681.400

- The Final Rule clarifies that the competitive procurement requirements in sec. 123 of WIOA apply **only** if the Local WDB chooses to award grants or contracts to youth service providers to provide some or all of the youth program elements. For example, a Local WDB could choose to procure competitively all youth program elements, or it could choose to competitively procure a few of the youth program elements and provide the remaining program elements themselves.
- In other words, LWDBs **do not** have to procure the 14 youth elements. WIOA sec. 123 states that **if** a LWDB chooses to award contracts for youth workforce investment activities, that procurement must be on a competitive basis.
- DOL encourages local WDBs to continue to award contracts to youth service providers when local areas have access to experienced and effective youth service providers (DOL p. 380-381).

**Perkins One-Stop Partner Funding**

- The Joint WIOA NPRM designated the state eligible agency under the Perkins Act as the required one-stop partner and consequently required that infrastructure costs be paid from the
The Final Rule instead designates that the Perkins one-stop partner is the eligible recipient at the postsecondary level, or a consortium of eligible recipients at the postsecondary level in the local area. The departments have determined that this change is consistent with WIOA sec. 121(b)(1)(B)(iv), which designates local one-stop Perkins partners as the entity that carries out career and technical education programs at the postsecondary level in a local area under the Perkins Act (DOL/DOE p. 445).

The departments have concluded that the state’s involvement could be valuable at the negotiation stage and have modified §678.415(e) and §678.720(a) to provide that the local recipients at the postsecondary level may request assistance from the state eligible agency in completing their responsibilities in negotiating local MOUs (DOL/DOE p. 445-446).

The definition of “public official”

- The changes to §603.2(d), to facilitate state compliance with WIOA's reporting requirements, clarify and expand the definition of who and what entities are considered “public officials.” The amendments to §603.2(d) clearly enumerate that “public official” includes officials from public postsecondary educational organizations; state performance accountability and customer information agencies; the chief elected officials of local areas (as that term is used in WIOA sec. 106); and a public state educational authority, agency, or institution. Some of these officials already would meet the definition of “public official” under current §603.2(d); however, the amendments make this clear.

Issues of Concern: The requirement for a description of how the state will ensure interoperability of data systems in the reporting on core indicators of performance and performance reports is listed only under the AEF ALA title II specific section (§676.115); however, in the law, the requirement for such information is listed under sec. 102(b)(2)(C) State Operating Systems and Policies of WIOA. The regulations place the responsibility of ensuring interoperability of data systems on the title II adult education programs, which is not feasible because the various data systems are governed under different programs and frequently by different agencies.

- Due to the complexity of integration, including the amount of time, planning, and resources necessary to achieve interoperability of data as provided for in §676.115(c) of the NPRM, DOL and DOE have deleted the section and instead have included the concept in the WIOA State Plan ICR, consistent with sec. 102(b)(2)(C) of WIOA. This language is now a general requirement that states address fiscal and management accountability information system planning across all of the programs included in a unified or combined state plan, as required by sec. 116(i)(1) of WIOA (DOL/DOE p. 64).