



Comments on the Workforce Innovation and Opportunity Act (WIOA)
Notices of Proposed Rulemaking (NPRMs) issued on April 16, 2015 by the U.S. Department of Labor and
U.S. Department of Education

Submitted by the Chicago Jobs Council
June 12, 2015

The Chicago Jobs Council is pleased to submit these comments regarding the Workforce Innovation and Opportunity Act (WIOA) Notices of Proposed Rulemaking (NPRM) RIN 1205-AB74 (Docket No. ETA-2015-0002), "Joint Rule for Unified and Combined State Plans, Performance Accountability, and the One- Stop System Joint Provisions," NPRM RIN 1205-AB73 (Docket No. ETA-2015-0001), "Implementing Title I and Title III of WIOA"; and NPRM RIN 1830-AA22 (Docket No. ED-2015-OCTAE-0003), "Implementing programs and activities authorized under Title II of WIOA."

The Chicago Jobs Council (CJC) is a 34-year-old anti-poverty organization that works to ensure access to employment and career advancement opportunities for marginalized job seekers and low-skilled workers. CJC has a membership of 100 community-based organizations, civic groups, businesses and individuals committed to helping disadvantaged Chicagoans and Illinoisans move out of poverty and into the workforce. CJC has an extensive history with the Workforce Investment Act (WIA) system, since its inception, and our staff members hold seats on the Chicago Cook Workforce Board, Service Delivery Committee, and Youth Council. We have been regularly engaged with the local WIA provider agencies over the last several years and their input has informed CJC's participation on the local board and committees, as well as policy conversations with State WIA administrators, including the Illinois Department of Commerce and Economic Opportunity (Title I), Illinois Community College Board (Title II), and the Illinois Department of Employment Security (Title III).

CJC's comments reflect input from ten local workforce stakeholders who assisted us with reviewing the regulations. Additionally, our comments are informed by CJC's work with a range of workforce providers and adult education providers, anti-poverty organizations, and other stakeholders in Chicago and across Illinois over the last several years. Our comments also reflect and build upon recommendations and comments from recognized national organizations including the National Skills Coalition, the Center for Law & Social Policy, and Heartland Alliance's National Initiatives on Poverty and Economic Opportunity.

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The following comments are presented in numerical order, per the proposed rules.

Joint Rule for Unified and Combined State Plans, Performance Accountability, and the One-Stop System Joint Provisions: Comments on NPRM RIN 1205-AB74

Career Pathways supported in Unified State Plan

§676.105(d)(3)(v) What are the general requirements for the Unified State Plan?

Many providers and advocates in the workforce development and adult education fields are very encouraged that WIOA defined career pathways for the first time in federal legislation. While the development of career pathways is a required activity in many levels of the workforce system, the law is not clear on what activities the state and local workforce board must perform related to implementation of career pathways. We propose that the Departments add clarifying language on how States should operationalize career pathways and their required elements. Areas for clarification include what entity(s) is responsible for developing specific policies and procedures to support career pathways, as well as whether local boards are required to implement each element outlined in the career pathways definition. Additional clarity will help to ensure that states and local areas invest in planning and implementation activities across programs, and that career pathways strategies are inclusive of individuals with the lowest skills, limited English language proficiency, and other barriers to employment.

Data and Performance Accountability

§ 677.150(c) Definition of “Exit”

Common Exit

One of WIOA’s key components is to foster cross-program service, partnership, and innovation. The way in which ‘exit’ is defined is particularly important when multiple programs are serving an individual. We recommend that the definition of “exit” for the primary performance indicators be for a “shared” or “common” exit across WIOA. A participant should “exit” WIOA when they are no longer receiving a service from any of the six core programs (aside from self-service, information-only services, or follow-up services). Co-enrollment across programs will support more comprehensive services for participants and improve outcomes, particularly for adults and youth with barriers to employment. For example, career pathways strategies can be most effective when Title I and Title II providers can co-enroll participants and work toward the common goals of skills gains, transition to postsecondary education and training, credential attainment, and career-path employment.

In order to support common exit and co-enrollment, local areas will need support to develop shared credit policies. Core programs should be able to share credit across six performance indicators if a participant is co-enrolled in their programs. For example, if a registrant is co-enrolled in both Titles I and II, the Title I Provider and Title II Provider should be able to provide coordinated services and together work to achieve the six performance indicators, while also being able to share credit for outcomes achieved. Co-enrollment and shared credit policies will help the core programs to combine efforts to most effectively serve participants and most efficiently use public resources, while reducing duplication of services.

Future Services Planned

The regulations propose that “exit” (except for Vocational Rehabilitation) is the last date of service, meaning that the individual has not received any services for 90 days and there is no future service planned. For this definition, “service” does not include self-service, information-only services, or follow-up services. We fully support the regulation that “exit” cannot be triggered if future services are planned. This supports career pathways strategies that have on ramps and off ramps to employment and training and is very important for adults who may progress through career pathways programs over a long period of time due to the need to work or family responsibilities. WIOA programs should be able to indicate in their records that future services are planned.

Extend 90-day Exit Provision

In terms of the 90 day (with no services) threshold for determining exit, we recommend that the Departments extend this threshold- particularly for out-of-school youth who often participate in services over a longer period of time, as well as individuals who are experiencing homelessness and frequently connect and disconnect with services. The Departments should work with the research community, as well as national experts serving adult and youth job seekers facing barriers to employment to determine an appropriate length of time with no active services prior to automatic exit.

Support Re-enrollment: Serving the Harder to Serve

In addition, we recommend that regulations enable providers to reenroll participants who were “negative” exits due to loss of contact with the program. If a participant wants to reengage in services, the program should be able to reenroll the participant and have the opportunity to positively exit them at a later date if performance outcomes are achieved. A more flexible exit policy and the ability to reenroll will encourage, rather than discourage, programs to serve people experiencing homelessness, out of school youth, and other populations that are more likely to disengage and then reengage in services due to life circumstances.

§ 677.155(a)(1)(iv) Postsecondary credential attainment measure

This statutory indicator measures postsecondary credential attainment and high school completion of program participants during participation in the program or within one year after exit. Given the range of credentials that a participant could earn, a phased in approach should be implemented for this indicator in order collect information and inform policies. From the start of WIOA roll out, the core programs should be required to report on all types of credentials that participants are earning. This will provide information about the range of credentials that participants are earning and may indicate how specific types of credentials correlate with labor market outcomes. A phased in approach for this measure will also build the system’s capacity to collect this type of information in a systematic way. The information collected in the first one to two program years will help to inform the development of state and local level policies on credential attainment.

§ 677.155(d)(3) Youth earnings measure

The median earnings measure proposed at § 677.155(d)(3) is new for youth. Given that the proposed regulations encourage transitioning youth into postsecondary education and training, it is important for the Departments to consider which youth are counted in the median earnings measure. Youth who engaged in education and training programs at exit will likely either be working part-time or not be working at all, given their commitment to attaining a credential. If these youth are included in the

median wage measure, it will negatively impact performance on this measure. Local areas that are successful in exiting youth to postsecondary education and training should not be penalized for low performance on the median earnings measure. Exited youth involved in education or training activities, including postsecondary education, should be excluded from the calculation of median wage.

§ 677.170 Statistical adjustment model to adjust performance levels for primary indicators

We support the use of a statistical model to adjust performance levels-- both in advance of the program year to assist with negotiating performance targets, and following the program year to account for actual economic conditions and participant characteristics. In addition to the factors proposed in § 677.170, race and gender should be added. Both race and gender can be discriminatory factors that would lower employment and/or lower median earnings, even with other conditions held constant. The final factor listed in the regulation, “welfare dependency,” should be re-described as “recipients of public benefits” to align with the priority of service language in 20 CFR 680.600(b).

We also recommend that once the model is developed, the Department work with states and localities to test it over a time-limited trial period. The model can then be improved based on information gathered from the trial period. It is important that the model be periodically reviewed to ensure that it is still factoring in appropriate indicators and effectively supports local areas to serve high-need individuals.

§ 677.175 Use of Unemployment Insurance/wage records

It is important for the Department to provide alternative ways to track employment outcomes, in addition to Unemployment Insurance wage records. For some participants, including those who are self-employed wage record matching is not an option for tracking employment outcomes. Additionally, programs should be able to report this alternate wage information on required performance reports.

§ 677.190 When are sanctions applied for failure to achieve adjusted levels of performance?

Of the three criteria presented in the regulations for assessing state’s performance, § 677.190(c)(2), the state average measure of the indicators measure will create incentives for states to ensure core programs work together to make progress on all six indicators. Part of the promise of this legislation is institutionalizing opportunities for partnerships between programs, leading to better, more coordinated services—particularly for people with multiple barriers to employment. If state performance is measured using the state average measure of the performance indicators, we believe this will support the spirit of the law.

In contrast, we are concerned that § 677.190(c)(1), using the average program scores for each state to measure state performance, will continue to silo programs and disincentivize partnerships between programs.

§ 678.420 Roles and responsibilities of the required one-stop partners

Additional clarification is needed on partners’ financial support of the One-Stop System programming and infrastructure costs. Currently, the regulation states that all partner contributions to the costs of operating and providing services within the one-stop center system must be proportionate to the benefits received and adhere to the partner program’s Federal authorizing statute, and to Federal cost principles requiring that costs are reasonable, necessary and allocable. This would be more likely to

happen in a meaningful way if each partner’s programming authorization could be amended to include these expectations. Under WIA, several of the partners indicated that because the regulation mentions their programs, it does not mean they had to comply. Federal regulation and guidance, under WIA, did not ensure that the Governor and State Board would direct agencies to contribute to the One-Stop system.

§ 678.425 Services at One-Stop Centers

Additional clarification is needed on what minimum programs and services must physically be available in the One-Stop Centers. § 678.425 lists what services must be provided, however it does not describe how or where they must be provided. In order to promote access to services, it is important that customers be able to receive some level of in-person assistance associated with each of the required partners at the One-Stop Centers.

Implementing Title I and Title III of WIOA: Comments on RIN 1205-AB73

State Board Composition

§ 679.110 State Workforce Development Board

Require Adult Education administrator

State Boards are required to have “lead State officials with primary responsibility for each of the core programs”. While § 679.110(f)(3) prohibits a government entity from serving as a representative of more than one subcategory under (b)(3)(iii), draft regulation allows the head of the agency to represent each of the required programs when a single government agency is responsible for multiple programs. In order for State Boards to effectively develop and implement career pathways strategies, coordinating Title I and Title II services, the final rules should require that Adult Education have a unique seat on the State Board, and not be represented by Higher Education or Perkins.

Community-based organization serving high-need individuals

Additionally, we recommend that State Boards *be required* to have one or more “representatives of community-based organizations that have demonstrated experience and expertise in addressing employment, training, or education needs of individuals with barriers to employment,” rather than being optional. Given that WIOA is intended to serve high-need individuals with multiple barriers to employment, this representation is crucial.

Local Board Composition

§ 679.320 Required members of the Local Workforce Development Board

Adult Education provider

Given the focus on career pathways strategies and the importance of the core programs coordinating services, we agree with the proposed regulation requiring that Local Boards include “at least one eligible provider administering Title II adult education services” as part of a career pathways agreement or partnership.

Community-based organization serving high-need individuals

With regards to local board representation, we recommend that Local Boards be required to have one or more “representatives of community-based organizations that have demonstrated experience and expertise in addressing employment, training, or education needs of individuals with barriers to

employment”. Proposed 679.320(c)(3) makes it optional that this type of community-based organization representative be on the Local Workforce Development Board, as part of the requirement that 20 percent of members of the Local Board be ‘workforce representatives’. Given that WIOA is intended to serve high-need individuals with multiple barriers to employment (homelessness, criminal record, basic skills deficiency, recipients of public benefits), it is crucial that community-based organizations with experience serving high-need individuals be required representatives on the Local Board.

Consumer of WIOA Services

It will benefit the local WIOA system if a consumer of WIOA program services is a member of the Local Board. The perspective of individuals who have received services in each of the four Title programs will be invaluable in terms of informing service delivery and policies at the local level. The homeless services system ensures that there are ‘persons with lived experience’ on Continuum of Care committees. The workforce system should adopt this practice also.

Provider serving Out of School Youth

§ 679.320(c)(4) We also recommend that Local Boards be required to include one or more representatives of organizations that have demonstrated experience and expertise in addressing the employment, training, or education needs of eligible youth- and specifically require that this representative have expertise serving out-of-school youth. Given the emphasis that the legislation places on serving out-of-school youth, with the requirement that 75% of Youth Title I funding be allocated to this population, it is important that services to this high-need population be represented on the Local Board. A representative that can contribute expertise related to serving out-of-school youth is particularly important given that local areas are no longer required to have a Youth Council. While Local Boards may establish a standing committee (§ 679.320) to provide information and assistance with issues related to the provision of services to youth, it is not a requirement. Proposed 679.320(c)(4) should be changed to require a representative with expertise serving out-of-school youth.

Career Pathways Planning by Local Board

§ 679.370 Functions of the Local Board

§ 679.370(4) should specifically include representatives from adult education programs as partners. WIOA requires that Local Boards develop and implement career pathways, and the law further requires that adult education must be aligned with the other core programs to develop career pathways. However, the regulations are not clear on the role of adult education as a partner in the development and planning of career pathways at the local level. While proposed § 679.370(4)(f) states that the Local Board work must with representatives from secondary and post-secondary education programs to lead efforts to develop and implement career pathways, representatives from adult education programs are not mentioned. In order to ensure that career pathways include adults with the lowest skills, § 679.370(4) should specifically include representatives from adult education programs as partners. Both adult education administrators and organizations providing adult education services should be involved in planning. Having adult education as a planning partner will ensure that that the local board can work with entities carrying out the core programs to facilitate the development of career pathways and co-enrollment, as described in proposed §679.560(b)(2)(ii).

§679.560 Contents of the Local Plan

It is critical that Adult Education be an integral player in local and state planning processes. While co-planning is referenced primarily in the DOL regulations, Adult Education is not a required planning partner. Adult Education should be a required partner in planning in order to ensure that Title I and Title II are as aligned and coordinated as possible. WIOA encourages implementation of career pathways strategies and requires that both local and state workforce development boards develop plans to implement career pathways. In order for career pathways strategies to be comprehensive and effective in serving all low-skilled adults, Adult Education needs to be an engaged planning partner. We recommend that the regulations require that Adult Education be involved in career pathways planning.

§ 680.620 How does the Temporary Assistance for Needy Families program relate to the one-stop delivery system? (§ 678.405 Is Temporary Assistance for Needy Families a required one-stop partner?)

This regulation lists TANF as a required partner in the One-Stop system, but provides the option for a Governor to opt out. The Department should provide stronger language about the inclusion of TANF (employment and training programs) in the One-Stop system. Given that many states have already integrated TANF into their local workforce systems, we think that the remainder of the states should find a way to make this happen. If TANF employment and training programs are included, it provides an opportunity to integrate services for low-income job seekers. Why make it a mandatory partner under WIOA but allow for easy exclusion by Governors? If the Department believes that TANF is an important partner to include, then it should not be easy for states to opt out and continue to silo the programs.

680.780 Who is an “incumbent worker” for purposes of statewide and local employment and training activities?

This regulation proposes an updated definition of incumbent worker from WIA. The Department proposes that an ‘incumbent worker’ be a current employee who has an “established employment history of six months or more”. We recommend that the incumbent worker definition include all workers who are employed by a company. This will allow employers to fully benefit from WIOA-supported incumbent worker training, which is designed to meet the special needs of an employer to retain a skilled workforce or avert the need to lay off employees by assisting workers in obtaining the skills necessary to retain employment, as described in proposed § 680.790.

The following is an example, provided by a workforce development stakeholder in Chicago, which demonstrates the benefit of allowing all employed workers to access incumbent worker training: Employer ‘A’ must make a technology conversion on October 1. This will require training staff on new processes prior to that date. Ideally, training would be completed by August 1 to allow for ‘practice and testing’. “A” has had limited turnover and has plans to add staff. “A” has proposed an Incumbent Worker Training Program to train all affected staff, however the provision that a staff must have been employed for a minimum six months precludes newer staff from receiving the training. Thus, the Incumbent Worker Training would only benefit workers who have been at the company longer than six months. This poses both logistical and potential staff morale issues for “A”.

In addition to being a tool to help current workers advance within a company, we believe that incumbent worker training should also be accessible for workers who are working in a low-wage/unstable/low skill job and want to pursue a high-wage, higher-skill job with another company. Incumbent worker training has the potential to be the most flexible source of training funding and be

used to try innovative strategies to increase the skills of low-skilled workers who have work experience, labor market attachment, and job readiness skills.

680 Subpart C- Training

Flexibility to combine Individual Training Account/On-the-Job Training /Paid Work Experience

The Department should provide flexibility, and related guidance, to use Individual Training Account (ITA) funds concurrently or successively with paid work experience or on-the-job training (OJT). Paid work experience, for example, can be a valuable tool for individuals to gain additional skills while participating in occupational skills training and career pathways programming. Additionally, an individual who has recently completed or will soon complete occupational classroom training (using an ITA) can attain additional specific skills through OJT with a new employer. This combined use of ITA/OJT or ITA/paid work experience will provide additional benefits to the participant.

§ 680.830 Transitional Jobs

We commend the inclusion of a definition of Transitional Jobs in WIOA and the ability for local boards to leverage 10 percent of training funds for the implementation of Transitional Jobs programs for individuals with barriers to employment. As recommended by Heartland Alliance’s National Initiatives on Poverty and Economic Opportunity, we urge the Department to reiterate in the final WIOA rule that the intent of the definition of Transitional Jobs as “time-limited, work experiences that are subsidized...” means “wage-paid” subsidized employment consistent with other definitions of [subsidized employment](#) in federal law and agency guidance.

We encourage the Department to support all components of a comprehensive Transitional Jobs program and issue further guidance and support to states and localities around the core components of TJ programs:

- Targeting and assessment
- Job readiness and skill development
- Employment-focused case management and supportive services
- Subsidized, wage-paid temporary employment
- Unsubsidized job placement
- Job retention support
- Linkages to literacy/education/training
- Protections around displacement of workers.

This is particularly crucial given that it is the first time that Transitional Jobs programs have been codified into federal public workforce law and all elements of the strategy are considered allowable uses of local WIOA training funds. The Department should play an active role in supporting the implementation of these models in order to uphold the goals, intent, and evidence-based practice collected by the field.

CJC strongly supports the related recommendations made by [Heartland Alliance’s National Initiatives on Poverty & Economic Opportunity](#).

§ 680.600 Priority of service

WIOA strengthens the requirement that specific groups of high-needs adults are given priority of service for career and training services under the Title I Adult programs. In addition to requiring that low-income adults and individuals receiving public assistance be prioritized, as under WIA, proposed § 680.120 and § 680.600 requires that individuals who are basic skills deficient are also prioritized. WIOA also removes the “limited funding” exception and makes priority of service automatic for all WIOA Adult funding. These statutory changes will help to increase services to targeted high-need adults if the final rules strengthen this requirement and through local implementation.

Definition of “basic skills deficient”

The definition of basic skills deficient in WIOA has been expanded to include “youth or adults that are that are unable to compute or solve problems, or read, write, or speak English, at a level necessary to function on the job, in the individual's family, or in society,” in addition to individuals with English reading, writing, or computing skills at or below the 8th grade level. This broader definition could weaken the intent of priority of service, since it could be interpreted to include individuals who lack specific skills needed to be successful in a particular employment position, even if they currently have the skills and experience needed for other in-demand occupations. In order to ensure that priority of service regulation actually increases the level of services to adults with the most barriers to employment, the Department should interpret the interaction between the expanded definition of “basic skills deficient” and the provision ensuring “priority of service” to avoid classifying otherwise high-functioning individuals as “basic skills deficient” because they lack specific skills needed for a particular job.

Effective implementation of priority of service

Proposed § 680.600(c) states that, while priority must be given under Title I Adult funds to the three priority groups, the Local Board and Governor may establish a process that also gives priority to “other eligible individuals”, as long as it is consistent with priority of service for veterans. The rule for designating “other eligible individuals” for priority of service needs clarification to ensure that public assistance recipients, other low-income individuals, and individuals who are basic skills deficient are prioritized first. The Department should modify the final rule to read “consistent with the priorities for veterans and public assistance recipients, other low-income individuals, and individuals who are basic skills deficient,” to be clear that no new priority can be set above the targeted high-needs adults targeted by this provision.

Additionally, the Department should provide guidance to states clarifying how to establish systems that prioritize services. The Department should set expectations for states and local areas to develop policies and protocols that identify target populations, outreach methods, delivery strategies targeted to each population, and mechanisms used to support the prioritized population. This guidance should include examples of how One-Stops and affiliate providers can establish protocols and mechanisms to increase services to individuals with the most barriers to service, related to the list of factors outlined in § 677.170, the regression model, including having a criminal record, experiencing homelessness, and limited literacy or English proficiency. It would be useful for the Department to compile examples of states and local areas that are successfully implementing priority of service and use this information in technical assistance to the field.

Set Goals for serving more targeted high-need adults

We recommend that the Department set benchmarks to monitor effective implementation of the priority of service provision and show improvement in the portion high-needs adults who receive services. The Department could set a system-wide goal for priority of service and states could then use these goals to measure the progress of local areas in implementing effective protocols. States and local areas that achieve benchmarks for priority of service should be given priority in federal discretionary grant awards.

§ 683.130 Transfer of funding between Adult and Dislocated Worker programs

This draft regulation provides flexibility to local areas to transfer up to 100 percent of funding between the Title I Adult and WIOA Dislocated Worker programs, with written approval of the Governor. The ability to transfer funds was previously available through a waiver under WIA. The statutory flexibility under WIOA could lead to local areas transferring 100 percent of funding away from the Title I Adult program. Given that the Adult program specifies priority for targeted high-need adults and the Dislocated Worker program does not include such a priority, the ability to move 100% of Adult funds could drastically reduce services to those who need them the most. We recommend that there be a waiver required in order to gain this level of flexibility on transferring funds between Adult and Dislocated Worker programs.

§681.280 Is a youth with a disability eligible for youth services under the Act if their family income exceeds the income eligibility criteria?

There is an inconsistency between § 681.250 and § 681.280 that we are highlighting for correction. § 681.250 indicates that the low-income requirement does not apply to out of school youth with disabilities. However, § 681.280 reads that for an individual with a disability, the income level (i.e., low-income level) for eligibility purposes is based on the person's income rather than total family income. This inconsistency is present in both the preamble to the proposed regulation and the proposed regulation itself. § 681.280 should be rewritten to reflect that the low-income level requirement only applies to in school youth, and not out of school youth.

§ 681.230 What does “school” refer to in the "not attending or attending any school" in the out- of- school and in-school definitions?

We fully support the Department’s definition of “school”. We agree with the regulation that providers of adult education under Title II of WIOA, YouthBuild programs, or Job Corps programs not be considered as schools and that youth involved in these programs will be considered Out of School youth for the purposes of Title I youth program eligibility. We also support the ability for co-enrollment between the Title I Youth and Title II Adult Education programs. This is especially beneficial for the out of school youth, as they can receive work experience and occupational skills through Title I and literacy skills through Title II. This regulation will support their involvement in career pathways programming, such as bridge programs.

Implementing Programs and activities authorized under Title II of WIOA: Comments on NPRM RIN 1820-AA22

§ 463.24 Establishing “demonstrated effectiveness” for eligible providers

In addition to considering past performance data to demonstrate effectiveness and the ability to meet WIOA performance measures, the characteristics of participants served by providers should also be considered. The Department should develop guidance for states and local areas to take into account the participant population being served by providers. Guidance can help to ensure that prospective providers serving harder-to-serve participants (e.g. lowest levels of literacy) are considered effectively.

§ 463.37 Defining “integrated” education and training

This section defines integrated education programs as requiring a “single set of learning objectives that identifies specific adult education content, workforce preparation activities, and workforce training competencies.” We encourage the Departments to provide additional guidance to states and eligible providers on appropriate tools for measuring “workforce preparation activities” and “workforce training competencies.” These two areas are newer program elements for some adult education providers and it would be helpful to offer resources on how these two elements can be measured.

§ 463.34 Workforce Preparation Activities

‘Career exploration and awareness’ should be added to the list of activities that comprise workforce preparation. Knowledge of careers, career pathways, as well as career pathways programming (e.g. adult education bridge programs) is an important workforce preparation activity and also supports transitions from adult education to post-secondary education.