

QUICK REVIEW: WORKFORCE INNOVATION & OPPORTUNITY ACT

AS OF JULY 7, 2016

In an effort to provide our membership with a quick review of the “Final Rule,” we’ve honed in on the major areas of concerns related to the Workforce Innovation and Opportunity Act (WIOA). Together, we’ve partnered across the California Workforce Association, National Association of Workforce Boards, New York Association of Training and Employment Professionals, and the Pennsylvania Workforce Development Association 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/>.

ONE-STOP OPERATOR PROCUREMENT

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

Quick Review: Located in U.S. DOL Final Rule; Section 679.410 and U.S. DOL/U.S. DOE Final Rule Sections 678.610 – 678.635:

“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 a competitive selection 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.
- Local competition must occur at least every four years. (State and Local Workforce Boards may require procurements more frequently.)
- The competitive process must follow local procurement policies and procedures and the principles of competitive procurement in the Uniform Guidance set out 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 **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 one-stop operators 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 help develop the local plan or 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 the budget for activities of the Local WDB in the local area.
- 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 the above 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.

MEMORANDA OF UNDERSTANDING FOR ONE-STOP PARTNERS

Issues of Concern: *What is the role of and what is required to be included in the mandated partner Memoranda 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:

The “Memorandum of Understanding” (MOU) is A locally negotiated, three-year agreement between local Workforce Boards, chief elected official(s), and the one-stop partners, describing the operation of the one-stop delivery system in the local area. For partners that may span multiple local areas, a single joint MOU may be developed across a region.

- Under WIOA, each required “mandated” partner must:
 - Provide access to its programs or activities through the one-stop delivery system, in addition to any other appropriate locations;
 - Use a portion of funds made available to the partners’ program, to the extent consistent with the Federal law authorizing the partners’ program and with Federal cost principles in 2 CFR parts 200 and 2900, to provide applicable career services and to work collaboratively with the State and Local WDBs to establish and maintain the one-stop delivery system;
 - Enter into a local Memorandum of Understanding with the local Workforce Board to describe the operation and delivery of services in the career center system; and
 - Participate on state and local boards, or within committees, as required.
- At a minimum that 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:
 - Funding the infrastructure costs of one-stop centers in accordance with §678.700 through 678.755; and
 - Funding 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 not less than once every three-year period, and if substantial changes have occurred, revised to ensure appropriate funding and delivery of services.
- Infrastructure costs of one-stop centers are non-personnel costs that are 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; and
 - Non-cash contributions (must be valued consistent with 2 CFR 200.306) are comprised of:
 - Expenditures incurred by one-stop partners on behalf of the one-stop center; and
 - 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 amounts each partner will contribute for one-stop infrastructure funding, include the infrastructure funding terms in the MOU, and sign the MOU.

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 aid 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 created. 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, will be 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:
 - The "American Job Center" identifier; or
 - The one-stop centers' existing name, followed by the tagline: "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, which allows an appropriate amount of time for the rebranding to be completed. Local areas can use their current marketing materials until the supply is exhausted.
- U.S. DOL and U.S. ED will issue further guidance, and have issued a style guide to aid in the transition at <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.

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?*

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 percent (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 listed in § 681.230 are considered

to be “OSY” 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 a 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 through the WIOA legislation. Has the final rule clarified expectations about 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 the Eligible Training Providers, the Governor must take into account the use of technology to provide training services to under-resourced local areas, such as rural communities.

Virtual Services may be used to increase access to the range of services, but they cannot be the only means to access one-stop center services. “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”

PAY FOR PERFORMANCE CONTRACTS

Issues of Concern: *How is the federal government expecting local areas to use Pay-for-Performance contracts?*

Quick Review: Located in U.S. DOL Final Rule; Section 683.500:

- A WIOA Pay-for-Performance contract strategy is a specific type of performance-based contract strategy and includes:
 - Identification of the 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 hopes 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 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;

- 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.
- 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.*

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;
 - The percentage of those participants enrolled in an education or training program (excluding those in on-the-job training [OJT] and customized training) who attain a recognized 852 postsecondary credential or a secondary school diploma or its recognized equivalent during participation in or within one 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 one 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;
- A satisfactory or better progress report towards established milestones, such as completion of an OJT, or one year of an apprenticeship program or similar milestone, 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; and
- Effectiveness in serving employers, as signified by OMB CONTROL: 1205-0526 found at <https://www.doleta.gov/performance/pfdocs/Effectiveness%20in%20Serving%20Employers%20Specs%20-%204.20.2016%20FINAL.pdf>:
 - 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; or
 - 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.
- 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 obtain a recognized postsecondary credential or a secondary school diploma, or its recognized equivalent, during participation in or within one 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 one year from program exit;

- The percentage of participants who, during a program year, are in an education or training program as described above; and
 - 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.
 - The comparison of the actual results achieved in a local area to the adjusted levels of performance measures 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.

WIOA PERFORMANCE – PARTICIPANT DEFINITION AND EXIT

Issues of Concern: *What definitions apply to Workforce Innovation and Opportunity Act performance accountability provisions?*

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.

- (1) 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.
- (2) For the Workforce Innovation and Opportunity Act (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 one of the 14 WIOA youth program elements identified in sec. 129(c)(2) of WIOA.
- (3) 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; and
 - 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, the 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 and there are no plans to provide the participant with future services.
 - b. Services do not include self-service, information-only services, activities, or follow-up services.
- (2) For the VR program authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV (VR program):
- a. The participant's record of service is closed in accordance with § 361.56 because the participant has achieved an employment outcome; or because the individual has not achieved an employment outcome or the individual has been determined ineligible after receiving services in accordance with § 361.43.
 - b. A participant will not be considered as meeting the definition of exit from the VR program if the participant's service record is closed because the participant has achieved a supported employment outcome in an integrated setting but not in competitive integrated employment.
- (3) 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.