



June 15, 2015

Adele Gagliardi  
Administrator  
Office of Policy Development and Research  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Room N-5641  
Washington, D.C. 20210

**Re: Docket Number ETA-2015-0002, "Workforce Innovation and Opportunity Act" for Regulatory Information Number (RIN) 1205-AB74 and 1205-AB73**

Dear Administrator Gagliardi:

On behalf of the nation's 3,069 counties, the National Association of Counties (NACo) respectfully submits the following comments on the Workforce Innovation and Opportunity Act (WIOA) Notice of Proposed Rulemakings (NPRM).

**The National Association of Counties (NACo) unites America's 3,069 county governments.** Founded in 1935, NACo brings county officials together to advocate with a collective voice on national policy, exchange ideas and build new leadership skills, pursue transformational county solutions, enrich the public's understanding of county government and exercise exemplary leadership in public service.

On April 16, the Departments of Labor (DOL) and Education (ED) released a five part notice of proposed rulemaking (NPRM). The NPRM provides the Administration's proposed regulations for governing the implementation and administration of the Workforce Innovation and Opportunity Act (WIOA), P.L. 113-128. WIOA is the first update to the nation's workforce training programs since the passage of the Workforce Investment Act (WIA) in 1998. The legislation, which passed Congress by a wide bipartisan majority, focuses on supporting a demand driven workforce system to meet the needs of business and jobseekers in a coordinated system between employment, education and training programs. Some of the provisions take effect July 1, 2015. During the legislative process, NACo advocated for a demand driven workforce system that maintained local governance authority and that enhanced local flexibility to meet local needs.

Local elected officials will play a pivotal role in the administration of WIOA. The leadership role of elected officials is essential to maximizing WIOA's impact in state and local jurisdictions through collaboration with state and local workforce boards, and setting policy for the workforce system to achieve broader human capital and economic development goals. Local workforce development areas are best suited to adequately determine services and programs that effectively respond to local emerging economic realities and business needs.

NACo supports an effective implementation of WIOA and looks forward to working with DOL, ED and other federal agencies related to workforce partner programs to ensure that WIOA implementation process is

successful.

The Departments release of the NPRM is an important step towards incorporating the WIOA workforce development system enhancements. NACo’s comments reflect our support where the NPRM reinforces the intent of WIOA legislation, and includes areas in which we think there should be additional guidance or further clarification provided by the Departments as well as feedback on specific questions as requested in the NPRM.

Specifically, NACo’s comments focus on key issues relating to unified and combined workforce plans, local workforce area designation, workforce performance accountability, the one-stop delivery system, local workforce boards, local and regional plans and DOL-administered activities for adults, dislocated workers and youth.

## **Planning and Governance – Part 676**

### State Workforce Development Plan Implications for Locals

Under WIOA, each governor must submit a four-year plan for state workforce development to the Department of Labor. This state workforce plan must show how it aligns resources, coordinates and provides improved efficiency and delivery for a workforce system with six core partner programs:

- **Title I** – Adults, Dislocated Workers & Youth
- **Title II** – Adult Education and Family Literacy Act
- **Title III** – Wagner-Peyser Act - Employment Services
- **Title IV** – Vocational Rehabilitation

Under WIOA, the state workforce plan must be developed in consultation with local workforce boards and chief elected officials (CEOs), business, labor, community based organizations, education partners and other key stakeholders.

***NACo requests that the final regulations provide more detailed information on the state consultation process to ensure that CEOs and local workforce boards are included in the early stages of the process to create the state workforce plan in order to provide input on the front end versus the back end. This will help facilitate a coordinated process versus reactive process, which could harm and delay development of the state workforce plan.***

### Unified and Combined Workforce Plans Now Permitted

Each state has the option of creating a four-year unified plan or a four-year combined plan under WIOA. A unified plan covers the six WIOA core programs. A state can choose to submit a combined plan that not only covers WIOA’s six core programs, but also at least one additional federal program with a workforce component. Combined plans must include the information required by the laws governing the additional programs. The Department of Labor and the Department of Education will issue future joint guidance on submittal of combined plans.

***NACo welcomes future guidance soon from the Departments that will assist state and locals in deciding whether to submit workforce plans that cover additional workforce related programs besides the core six. This guidance will help state and locals evaluate the feasibility of submitting combined plans now or in the future.***

### Local Workforce Areas and Successful Performance Demonstration

Under WIOA, local workforce areas that are able to demonstrate successful performance and fiscal integrity must be permitted to continue to operate as a local workforce area and may not be re-designated without the consent of the local board and CEO in the local area.

***A major NACo priority in workforce reauthorization legislation was maintaining the local role and governing authority, including local workforce areas. NACo supports maintaining the structure for local workforce areas that are performing successfully and that they not be subject to re-designation without local board and CEO consent. This will allow local workforce areas to continue work in providing services and programs suited to meet the local workforce and economic realities.***

### **Performance Accountability Measures – Part 677**

#### Six Primary Indicators for Performance Measures

WIOA establishes six primary indicators to measure performance across the core programs to assess the effectiveness of state and local areas in achieving positive outcomes for individuals served by core programs. It now includes a measure on effectiveness of serving employers and seeks comments on how to best measure this addition.

- **Indicators of performance are as follows:**

1. Percentage of participants who are in unsubsidized employment during the second quarter after exit from the program;
2. Percentage of participants who are in unsubsidized employment during the fourth quarter after exit from the program;
3. Median earnings of participants in second quarter after exit;
4. Percentage of participants who obtained recognized post-secondary credential or high school diploma completion within one year of exit;
5. Percentage of participants who are in education and training program that leads to recognized post-secondary credential or employment and who are achieving measurable skills gains; and
6. Effectiveness in serving employers based on indicators developed.

- **Indicators of performance for youth are as follows:**

1. Percentage of participants who are in education and/or training activities or in unsubsidized employment during second quarter of exit from program;
2. Percentage of participants in education and/or training activities or in unsubsidized employment during the fourth quarter after exit;
3. Median earnings of participants who are in unsubsidized employment during the second quarter after exit;
4. Percentage of participants who obtained a recognized post-secondary credential or high school diploma or its equivalent during participation of up to one year after exit;
5. Percentage of participants who during the program year are in an education or training program that leads to a recognized post-secondary credential or employment and who are achieving measurable skills gains; and
6. Effectiveness in serving employers based on indicators developed.

***NACo supported simplifications of performance indicators across workforce training programs and welcomes the inclusion of metric that focuses on effectiveness in serving employers. This emphasizes the focus on a demand driven system meeting the needs jobseekers and employers.***

***NACo suggests a few options to measure effectiveness of serving employers. These include an employer evaluation/satisfaction survey on the workforce related services utilized by the employer, repeat use of workforce services and employer referrals of other businesses to take advantage of workforce development services. These options could help evaluate employer utilization of workforce services and how to improve these services and increase employer usage.***

#### WIOA Focus on Out of School Youth

A major change in WIOA is the shift in focus to services for out of school youth (OSY) rather than in school youth. WIOA requires 75 percent of youth funding to be used for OSY activities and 25 percent for ISY. Under WIA, 70 percent of funds were focused on activities for ISY.

***Due to this major shift in focus on OSY, NACo is urging DOL to implement this new requirement over time. Local areas should be given a minimum two-year transition period to properly implement OSY change and not harm their services to youth or performance levels.***

#### Additional Performance Indicators

Under WIOA, the governor may also apply additional indicators of performance to local areas in the state. The local performance report must provide information on actual performance levels for that local area for adults, dislocated workers and youth based on quarterly wage records consistent with the requirements for states.

***NACo urges DOL to add language to final rule clarifying that the governor can only propose additional indicators for performance in local areas if they are developed in consultation with the local boards and CEOs. Since it will be an adjustment to implement the new performance measures, both the local board and CEOs should be consulted and agree to any additional performance indicators prior to their implementation.***

#### Local Area Failure to Meet Performance

Under WIOA, if a local area fails to meet the performance indicators for adults, dislocated worker and youth programs for a third consecutive year, the governor must take corrective actions. The NPRM states this includes the development of a reorganization plan.

- **Elements of the Governor Reorganization Plan**

1. Requires appointment and certification of a new local board;
2. Prohibits use of eligible training providers and one-stop partners that have been identified as achieving poor levels of performance; or
3. Takes other significant actions that the governor determines are appropriate.

***Regarding the third element of a governor's reorganization plan, which allows them to take significant actions they determine appropriate, NACo urges that this element have defined parameters. Furthermore, that they have been negotiated and communicated to local areas in advance, or else it should be eliminated. As written, it is vague and too broad in scope. NACo is concerned that governors could use this language to re-designate or eliminate local workforce areas.***

### Appeals

Under WIOA, a local area may appeal the governor's reorganization plan if the local board and CEO appeal no later than 30 days after receiving notice of reorganization. The governor has 30 days after receipt of the appeal to make a decision. Local areas may appeal the final decision to Secretary of Labor within 30 days of final decision from a governor if appealed jointly by local board and CEOs and sent by certified mail. A governor's reorganization plan becomes effective at the time it is issued and remains in effect unless the Secretary of Labor rescinds or revises the reorganization plan under WIOA.

***NACo requests that DOL allow the local area appeal process to occur prior to a governor's reorganization plan becoming effective. This would help minimize disruption to the workforce system in cases where a local area appeal is successful.***

### **One-Stop Delivery System – Part 678**

Title I of the NPRM assigns responsibilities at the local, state and federal level to ensure the creation and maintenance of a one-stop delivery system that enhances the range of the quality of education and workforce development services that business and individual customers can access. One physical comprehensive one-stop center must be in each local area that is accessible.

#### New Mandatory One-Stop Partner

Under WIOA, the Temporary Assistance for Needy Families (TANF) program is now a mandatory one-stop partner. A governor may determine that TANF will not be a mandatory partner with the state or within some local areas, if a governor sends notice in writing to the DOL and HHS Secretaries. TANF programs may still opt to be a one-stop partner or work with one-stop centers.

***NACo thinks that addition of TANF as one-stop partner will facilitate improved services for many jobseekers. Many local one-stop centers have already incorporated TANF as a partner under WIA.***

#### Responsibility of One-Stop Partners

The NPRM (Section 678.420) describes responsibility of one-stop partners to provide access to programs at one-stop, use a portion of funds made available to the partners programs, provide applicable career services and work collaboratively with state and local boards to establish and maintain the one-stop delivery system. These responsibilities include jointly funding the one-stop infrastructure through partner contributions.

The Memorandum of Understanding (MOU) is the design of local one stop center and is executed with the local workforce board, CEOs and one-stop partners. The MOUs are developed through local discussion and negotiation. While MOUs were utilized under WIA, WIOA defines certain parameters and requirements for the MOUs.

***NACo appreciates DOL's efforts to assist with facilitation of funding one-stop centers via MOU and partner contributions. However, this process for calculating and ensuring receipt of fair one-stop partner contributions is still too cumbersome and could delay efficient one-stop operation. In particular, if local boards reach impasse in negotiations with partners on share of costs. In many states, local governments pay more than their fair share for infrastructure costs. NACo continues to support a direct funding stream to pay for one-stop center infrastructure costs.***

### Competitive Process Required for Selection of One-Stop Operators

The NPRM confirms that local boards must select one-stop operators through a competitive process and identifies different competitive processes that can be used. The competitive process is a new requirement under WIOA. Sole source procurement is only allowed under special circumstances. The local board can compete to be the one-stop operator but must put firewalls in place during the selection process. One-stop operators must be selected and be in place by June 30, 2017.

***The new requirement for the selection of a one-stop operator could be disruptive and costly for many local areas, particularly in rural ones where there is only one local board in a workforce area. NACo urges DOL to allow for flexibility and/or waivers from the competitive process requirement in these local areas, to prevent disruption to workforce system operations and avoid unnecessary expenses. If the governor and CEO agree, then the local board should be selected as the one-stop operator without a competitive process which could waste time and money unnecessarily.***

### **Statewide and Local Governance of the WIOA under Title I - Part 679**

#### Regions

WIOA requires states to identify intrastate and interstate regions which may be comprised of more than one local area, and requires local areas to plan regionally. The purpose of a region is to align workforce development resources to regional economies to ensure coordinated and efficient services to both job seekers and employers. WIOA requires a governor to assign regions prior to submissions of the state Unified or Combined Plan and in order to receive Title I adult, dislocated worker and youth allotments. A region can consist of a single local area, two or more contiguous local areas within a state or two or more contiguous local areas in two or more states. If a governor assigns two or more local areas to a region, it is then considered a planning region. A single local area may not be split across two planning regions. Local areas must be contiguous in order to be a planning region and effectively align economic and workforce development activities and resources.

***NACo urges that DOL require states to work with local areas to define regions in a way that is supportive of local considerations and boundaries.***

#### Local Workforce Development Areas Designation

WIOA also provides for local workforce development areas which may be identified individually or in combination as regions. Local areas serve as a jurisdiction for the administration of workforce development activities and the execution of adult, dislocated worker and youth funds allocated by the state. The governor must consult with State Board and chief elected official (CEO) and consider public comments from a wide range of stakeholders when creating designation or re-designation of a local workforce development area. A governor must designate local areas that are consistent with labor market and regional development areas – within a local area there must be common labor markets and economic development areas. A governor is permitted to approve local area designation request from any unit of local government, including a combination of multiple units. A governor may re-designate a local area that has been designated or re-designated, or if the local area requests and the governor approves the re-designation.

During the first two full program years following the enactment of WIOA, a governor is required to approve a request for initial designation from any local area designated as a local area under WIA as long as the entity was designated a local area under WIA and the local area:

- Performed successfully;

- maintained sustained fiscal integrity for two years prior to enactment of WIOA; and
- a local area in a planning region met the planning region requirements during the two-year period of initial designation.

Local areas that are able to demonstrate successful performance and fiscal integrity must be permitted to continue to operate and may not be re-designated without the consent of the local board and CEO in the local area.

If a local area that was designated under WIA requests initial designation under WIOA but does not meet all the requirements, the governor has discretion to approve the initial designation under WIOA or to re-designate the local area. The initial designation applies to PY 2015 and 2016.

***NACo applauds requirement that governors approve subsequent designation requests from local areas that have performed well and met fiscal requirements. We urge DOL to reinforce these requirements for re-designation to prevent any attempts to consolidate or eliminate local areas that are meeting workforce requirements.***

#### Re-designation of Local Workforce Areas

Under WIOA, a governor may also re-designate local areas at any time with the cooperation of the CEO and local board in a given local area. Local areas will be considered to have requested continued designation unless the CEO and the local board directly notify the governor that they no longer wish to operate as a local area.

***NACo appreciates that local areas will be presumed to continue their designation unless the CEO and local board notify the governor that they no longer wish to operate as a local area.***

Performed successfully for the purpose of initial designation means that the local area met or exceeded all performance levels the governor negotiated with the local board and CEO for the last two full program years (PY) before enactment of WIOA. It also requires that the local area not fail any individual measure for the last two consecutive PY before enactment of WIOA.

***NACo is concerned that the requirement that a local area not fail any individual measure for the last two consecutive PYs is overly restrictive and may negatively impact some local areas and allow governors to eliminate their area designation. We ask that performed successfully not be based on any/one individual measure, but based on the overall performance for last two PYs.***

#### Role of Local Workforce Board

The local (workforce) board serves as a strategic convener to promote and broker effective relationships between the CEOs and economic, education and workforce programs. The local board must develop a strategy to continuously improve and strengthen the workforce development system through innovation in and alignment and improvement of employment, training, and education programs to promote economic growth. Similar to current law, the CEO in each local area appoints the local board and the governor must certify the local board every two years. The local board sets policy within local area in partnership with the CEO, consistent with state policy. The CEO remains liable for funds received under WIOA unless governor of the area acts as the local grant recipient and bears liability.

***NACo supported retaining the current CEO authority to appoint the local board, and that the local board sets policy within the local area in partnership with the CEO. We are pleased WIOA continues to recognize the importance of local authority and decision making in the workforce development system.***

#### Training Services

The local board is prohibited from providing training services unless the governor grants a waiver. States must develop a procedure to review waiver requests received from local boards based on WIOA criteria. (Section 107(g)(1)(B)(i)). This is for extenuating circumstances, such as in rural areas with limited training providers. A request by a local board to be the designated training provider must be made through public comment for a period of 30 days or more and include those comments in the local area's final request to the state.

***While typical local areas contract out training services, NACo appreciates that local areas can provide training services if granted a waiver by the governor. NACo requests further guidance from DOL on whether a waiver is required to provide credentialed and non-credentialed training and also the process and timeframe for governors to grant a waiver request. This will equip local areas with information about the process for approval.***

#### Local Planning Requirements and the Regional Plan

The regional plan is completed in cooperation with the local boards and CEOs in a planning region. The local board and CEOs in a planning region must cooperate to develop a common response to the local planning requirements that discuss regional labor market information as required and any other appropriate requirements permitted by the governor. The planning region submits one regional plan to the governor that includes regional labor market information and other requirements required by the governor as well as each local plan in a single document.

DOL has determined the most appropriate and least burdensome way to reflect local plans in the regional plans is to incorporate the local plans within the regional plans. WIOA was silent on the coordination of the regional and local plan. DOL encourages governors to minimize the individual local area burden by reducing duplication and encouraging a coordinated service delivery.

***NACo appreciates DOL attempting to reduce burden on local areas in the regional planning process by incorporating the local plan into the regional plan. NACo also agrees that governors should minimize local area burden and encourage a coordinated workforce delivery system.***

#### Requirements for Approval of a Local Plan

A governor is required to review completed plans and they will be deemed approved after 90 days after submission unless the governor determines that some conditions have not been met. In the NPRM, DOL acknowledges that development of a local plan is dependent on several other essential state and local WIOA implementation activities and that local areas may not be able to respond fully to each of the required elements of the local plan in the outlined timeframe.

***Local area plans involve coordination at the state and local level. NACo asks that DOL issue parameters based on time frames when local areas have received necessary information to do planning and not on an arbitrary deadline.***



## **Adult and Dislocated Worker Activities under WIOA - Part 680**

### Update of Incumbent Worker Training Definition and Uses

Incumbent worker training is designed to either assist workers in obtaining the skills necessary to retain employment or to avert layoffs and must increase both a participant's and a company's competitiveness. WIOA explicitly allows for incumbent worker training at the local level. A local area can provide incumbent worker without a need for a waiver. To receive incumbent worker funding under WIOA, an incumbent worker must have an employer-employee relationship and an established employment history with the employer. Contract funds are to be paid to the employer for training provided to the incumbent worker to either to avert a lay-off or otherwise retain employment. Under WIOA up to 20 percent of the local areas combined total of adults and dislocated worker fund allotments can be used for incumbent worker training.

***NACo appreciates the added flexibility under WIOA to meet the needs of incumbent workers and employers. We support the expanded use of incumbent worker funding for averting layoffs or retaining employment. This was an additional enhancement that local governments requested. NACo also welcomes the additional flexibility to use adults and dislocated worker funds for incumbent worker training to meet local area needs.***

DOL is proposing that an employee must have worked six months for their employer before being eligible for incumbent worker training and that the incumbent worker training should increase the competitiveness of the employee or employer for the purposes of identifying high-quality incumbent worker opportunities.

***NACo supports DOL efforts to ensure high quality incumbent worker training opportunities for workers. NACo suggests the six month timeframe be shortened to three months with still some ability to allow for incumbent worker status even earlier, if needed.***

## **Youth Activities under WIOA - Part 681**

### Individual Training Accounts Permitted for Youth

Section 681.550 proposes to allow Individual Training Accounts (ITAs) for older OSY aged 18-24. ITAs reduce the burden for local areas by eliminating duplicative paperwork and need for enrolling older youth in both youth and adult formula programs.

***NACo thanks DOL for its effort to reduce the burden on local areas by allowing OSY to have individual training accounts eliminating duplicative process and staff and program efficiency.***

## **Administrative Procedures under WIOA Title I - Part 683**

### Local Board Funding Transfer Authority between the Adults and Dislocated Worker Activity Allocations

A local board may transfer up to 100 percent of a program year allocation for adult employment and training activities, up to 100 percent of PY allocation for dislocated worker employment and training activities between the two programs. The local board must obtain governor's written approval before making such a transfer. Local areas may not transfer funds to or from the youth programs.

***NACo appreciates the added flexibility under WIOA for local boards to meet the need of employees and business by transferring up to 100 percent of a PY dislocated worker and adults funding between the two programs. NACo requests that DOL add language to the final rule requiring governors to provide written***

***approval for a local board's request within 30 days of receipt and after this timeframe the request would be deemed approved.***

We thank you for the opportunity to comment and look forward to working together to ensure the successful implementation of WIOA by enhancing the nation's workforce system to provide opportunities for jobseekers and meet the needs of business. If you have any questions, please feel free to contact Daria Daniel, NACo's Associate Legislative Director at [ddaniel@naco.org](mailto:ddaniel@naco.org) or 202.942.4212.

Sincerely,



Matthew D. Chase  
Executive Director  
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