



“Seeking Comments” Reference Document

based on the

**Preamble Sections of DOL-Only and DOL-ED
Workforce Innovation and Opportunity Act NPRMs**

April 24, 2015

Prepared by

National Governors Association Center for Best Practices

and

National Association of State Workforce Agencies

“Seeking Comments” Reference Document

based on the

Preamble Sections of DOL-Only and DOL-ED Workforce Innovation and Opportunity Act NPRMs

April 24, 2015

Table of Contents

DOL-Only NPRM

<u>Section</u>	<u>Page(s)</u>
Part 679 -- Statewide & Local Governance under Title I of WIOA.....	3
Part 680 -- Adult & Dislocated Worker Activities under Title I of WIOA.....	4
Part 681 -- Youth Activities under Title I of WIOA.....	7
Part 683 -- Administrative Provisions under Title I of WIOA.....	8
Part 686 -- The Job Corps under Title I of WIOA.....	9
Part 687 -- National Dislocated Worker Grants.....	10
Part 688 -- Provisions Governing the YouthBuild Program.....	11
Part 652 -- Establishment & Functioning of State Employment Services.....	11
Part 658 -- Administrative Provisions Governing the Employment Service System.....	12

Joint DOL-ED NPRM

Part 676 -- Unified & Combined Plans under Title I of WIOA.....	14
Part 677 -- Performance Accountability under Title I of WIOA.....	14
Part 678 -- Description of the One-Stop System under Title I of WIOA.....	18

Purpose of this Document

The Preamble sections of the Notice of Proposed Rulemaking (NPRMs) published by the Departments of Labor and Education include numerous requests for "seeking comments" on various provisions within the draft regulations. While the entire NPRMs are open for comment, these specific requests for comment should be looked at closely since the Departments have indicated that they are particularly interested in feedback on these sections.

This document is intended to be used as a reference that includes all of the "seeking comments" references in the DOL-only and Joint DOL-ED NPRMs. States are encouraged to include comments on these references as part of your State's responses in the "Member Input Tool" sent to NGA and NASWA members on April 24th.

DOL-Only NPRM

Part 603--Federal-State Unemployment Compensation Program Disclosure of Confidential Unemployment Compensation Information under WIOA sec. 116

None

Part 675-Introduction to the Regulations for the Workforce Innovation and Opportunity Systems under Title I of the Workforce Innovation and Opportunity Act

None

Part 679 – Statewide and Local Governance of the Workforce Innovation and Opportunity System under Title I of the Workforce Innovation and Opportunity Act

State Workforce Development Boards

§ 679.120 – What is meant by the terms “optimum-policy-making authority” and “demonstrated experience and expertise”?

Proposed § 679.120(a) defines the term “optimum policy-making authority” as an individual who can reasonably be expected to speak affirmatively on behalf of the entity he or she represents and to commit that entity to a chosen course of action. This proposed section retains the same requirements found at 20 CFR 661.203(a).

Proposed § 679.120(b) defines the term “demonstrated experience and expertise” as an individual who has documented leadership in developing or implementing workforce development, human resources, training and development, or a core program function. WIOA sec. 101(d) adds new State Board functions, such as the development of strategies for aligning technology and data systems across one-stop partner programs to enhance service delivery and improve efficiencies in reporting on performance accountability measures. This provision will ensure that the State Board will include members that will assist the board in fulfilling these functions.

The Department seeks public comment on how to further define “demonstrated experience and expertise” and examples of the types of qualifications that would meet such a definition.

Local Governance

Proposed § 679.210(c) provides additional criteria the Governor may consider when identifying regions. These additional criteria, which provide a more comprehensive picture of regional economies and labor markets, provide additional data points to inform the Governor’s decision to assign local areas to regions.

However, the Department seeks comment on the appropriateness of these factors and requests suggestions of additional data points for defining a regional economy and labor market.

Local Boards

§ 679.410 – Under what conditions may a Local Board directly be a provider of career services, or training services, or act as a one-stop operator? Proposed § 679.410 explains the situations in which

the Local Board may directly act as a one-stop operator, a provider of career services or training services.

Proposed § 679.410(a)(1)(i) and (ii) establishes that a Local Board may act as a one-stop operator where a Local Board successfully participates in a competition or if the board meets the criteria for sole source procurement. Under both circumstances, as required by proposed § 679.410(a) (2), implementing WIOA sec. 107(g) (2), the Governor and CEO must agree to such selection. This clarifies the interaction between sec. 122(d)(2)(A) of WIOA, which requires that Local Boards select a one-stop operator through a competitive process, and WIOA sec. 107(g)(2), which states that a Local Board can be designated as a one-stop operator only with the agreement of the Governor and CEO in the local area. One interpretation of sec. 107(g) (2) is that Local Boards, with approval of the Governor and CEO, could be selected as one-stop operators without undergoing a competitive process. However, such a non-competitive selection is only appropriate after a competitive process has been conducted as required by WIOA sec. 122(d) (2) (A).

The Department welcomes comments regarding this interpretation.

§ 679.420 – What are the functions of the local fiscal agent?

Proposed § 679.420 describes the role of the local fiscal agent when the CEO in a local area elects to designate a fiscal agent. While the term ‘fiscal agent’ was widely used under WIA, the term was never defined, which led to inconsistent understanding of their role and function throughout the workforce system. This section clarifies the role of a fiscal agent to create a common understanding of that role.

Proposed paragraph (a) describes that the CEO or the Governor, where the Governor serves as the local grant recipient for a local area, may designate an entity to serve as a local fiscal agent. Proposed paragraph (b) provides a list of the key functions of a fiscal agent. The appropriate role of fiscal agent is limited to accounting and funds management functions rather than policy or service delivery. Proposed fiscal agent functions include those listed in paragraphs (b) (1) through (6) and (c) provide additional potential functions for single State areas.

The Department requests comment from State and local stakeholders regarding appropriate functions for a fiscal agent.

Regional and Local Plans

§ 679.570 – What are the requirements for approval of a local plan?

The Department recognizes that the development of the 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 timeframe provided. **The**

Department seeks comment on the scope of the challenges local areas may face regarding regional and local planning, and potential actions that the Department can take to help local areas address these challenges.

Part 680 – Adult and Dislocated Worker Activities under Title I of the Workforce Innovation and Opportunity Act

§ 680.330 – How can Individual Training Accounts, supportive services, and needs-related payments be used to support placing participating adults and dislocated workers into a registered apprenticeship program and support participants once they are in a registered apprenticeship program? This regulation is designed to ensure States and local areas have the flexibility to serve individuals in both being placed into a registered apprenticeship as well as to assist currently registered apprentices.

The Department is seeking comment on how registered apprenticeship programs and individuals enrolled or seeking to be enrolled in such programs may be best served within the one-stop delivery system.

Proposed § 680.330(a) states that participants may use an ITA to receive training at a pre-apprenticeship program that is on the State’s ETPL.

The Department is also open to comment on how pre-apprenticeship programs and individuals enrolled or seeking to be enrolled in such programs may be best served within the one-stop delivery system.

Eligible Training Providers

The Department is seeking comment on possible adaptations of ETP eligibility and reporting requirements to ensure small CBOs, especially those serving hard to serve participant populations, have the capacity to qualify as ETPs.

§ 680.450 – What is the initial eligibility procedure for new providers?

WIOA requires that Eligible Training Providers provide “verifiable program-specific performance information.”

The Department is interested in comments about the types of verifiable program specific-information this would include. The Department is particularly interested in the methods of providing verifiable information that are the least costly to the training provider and the easiest to verify to reduce the cost to the State or local area.

The Department has added a requirement that the applicant provide a description of the program. The Department thinks this information is not burdensome and is essential to enable customers to understand whether the program meets their training needs.

§ 680.460 – What is the application procedure for continued eligibility?

The Department anticipates that complete performance data as required under (f) (1) may not be available until PY 2018, given the lag time inherent in the performance indicators. Proposed paragraph (f)(1) allows the Governor to take into account alternate factors for any performance information that is not yet available until such performance data are available.

The Department seeks comment on alternate factors related to performance that may be used to establish eligibility during this time.

Proposed paragraph (f) (10) requires the Governor’s criteria to take into account whether the providers timely and accurately submitted eligible training provider performance reports, as required under WIOA sec. 116(d)(4).

The Department seeks comment on how best to apply the timely and accurate submission of these ETP performance reports as a factor for eligibility.

§ 680.500 – How is the State list of eligible training providers disseminated?

The Department is interested in comments on specific ways to structure the accompanying information so that it provides a complete and easily understandable picture of provider performance but is not so detailed or complex that it discourages users from consulting it or limits its utility to the lay person. Should, for example, there be a summary sheet that is easy and quick to read and, if so, what information must be on the summary sheet?

Work-based Training

WIOA also explicitly allows for incumbent worker training at the local level. In this proposed regulation, the Department seeks to ensure that incumbent worker training is targeted to improving the skills and competitiveness of the participant and increasing the competitiveness of the employer.

The Departments are seeking comment on the best way to structure these arrangements to maximize the likelihood that this ideal outcome occurs.

§ 680.730 – Under what conditions may a Governor or Local Board raise the on-the-job training reimbursement rate up to 75 percent of the wage rate?

Proposed § 680.730(a) identifies the factors that a Governor or Local Board must consider and document in determining whether to raise the reimbursement rate for OJT contracts up to 75 percent of the wage rate.

The Department is seeking comments from the public on how the relation of training to the competitiveness of the participant must be analyzed when implementing this provision.

680.740 How can on-the-job training funds be used to support placing participants into a registered apprenticeship program?

Proposed § 680.740(a) clarifies that an OJT contract may be made with a registered apprenticeship program for training participants.

The Department is seeking comments on what an appropriate maximum amount of time would be for OJT funds to be used to support participants in registered apprenticeships.

§ 680.770 – What are the requirements for customized training for employed workers?

Proposed § 680.770 identifies the eligibility requirements for employed workers to receive customized training.

The Department is interested in comments that discuss how to distinguish customized training from OJT. Should they focus on different service populations, different training strategies, or different types of jobs?

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

Proposed § 680.780 is designed to update the definition of an incumbent worker from WIA. An incumbent worker is employed with the company when the incumbent worker training starts.

The Department is seeking comment on the appropriate amount of time an employee must have worked for the employer before being eligible for incumbent worker training.

The Department is proposing a minimum of 6 months, but is seeking substantive comments on this proposal.

The Department is also seeking comments on how incumbent worker training should increase the competitiveness of the employee or employer for the purposes of identifying high quality incumbent worker opportunities.

Part 681 – Youth Activities under Title I of the Workforce Innovation and Opportunity Act

§ 681.260 – How does the Department define “high poverty area” for the purposes of the special rule for low-income youth in Workforce Innovation and Opportunity Act?

WIOA contains a new provision that allows for youth living in a high-poverty area to automatically meet the low-income criterion that is one of the eligibility criteria for ISY and for some OSY.

The Department is seeking comments on whether the poverty thresholds the Department is proposing are the most appropriate levels for youth living in a high poverty area.

§ 681.550 – Are Individual Training Accounts permitted for youth participants?

This proposed section allows ITAs for older OSY aged 18 to 24.

The Department welcomes comments on the proposed allowance of ITAs for older OSY.

§ 681.560 – What is entrepreneurial skills training and how is it taught?

This proposed section defines entrepreneurial skills training, as a new program element under WIOA. The Department has provided a list of possible methods of teaching youth entrepreneurial skills training.

The Department is specifically seeking comments from stakeholders around developmentally appropriate types and methods of teaching entrepreneurial skills.

§ 681.580 – What are follow-up services for youth?

This proposed section discusses the importance of follow-up services and lists examples of follow-up services for youth, which WIOA requires be provided for a minimum of 12 months. To meet follow-up requirements, programs must do more than just make an attempt to contact to gather reporting information.

The Department seeks comments on whether this section includes reasonable requirements for follow-up services.

Part 682 – Statewide Activities under Title I of the Workforce Innovation and Opportunity Act

None

Part 683 – Administrative Provisions under Title I of the Workforce Innovation and

Opportunity Act

§ 683.135 What re-allotment procedures does the Secretary use?

However, even if a State is subject to re-allotment, the Governor may use the unobligated rapid response funds described in WIOA sec. 134(a)(2)(A)(ii) that remain available after re-allotment to carry out statewide employment and training activities (in addition to rapid response activities). This preserves the additional flexibility provided to the Governors in WIOA sec. 134, by permitting Governors to use rapid response funds for statewide employment and training activities if not expended in the first year of availability.

The Department welcomes comments on the proposed re-allotment approach and potential impact on States, including the transfer flexibility.

§ 683.215 – What Workforce Innovation and Opportunity Act title I functions and activities constitute the costs of administration subject to the administrative cost limitation?

The Department welcomes comments regarding whether it is more advantageous to issue the proposed list of administrative costs in § 683.215(b) as a regulation, or to provide a general description of administrative costs similar to the definition in sec. 3(1) of WIOA and provide a rationale for why such an approach is advantageous.

The Department also seeks comment on whether this list will need to be flexible, and subject to review and change periodically, or whether it is anticipated to be stable. Additionally, the Department seeks comment as to whether indirect costs should be included as programmatic or administrative.

§ 683.240 – What are the instructions for using real property with Federal Equity (Reed Act)?

For JTPA funded properties, the proposed rule states that real property that was purchased with JTPA funds and transferred to WIA, is now transferred to the WIOA title I programs and may be used for WIOA purposes. When the real property is no longer needed for the WIOA activities, the recipient must seek instructions from the Grant Officer prior to disposition or sale. A sub recipient would seek instructions from the State. Such instructions must be consistent with 2 CFR part 200.

The Department welcomes any feedback from the workforce development system that promotes the use of these properties and streamlines the disposition process.

Pay-for-Performance Contract Strategies

Because of the requirements contained in statute, the Department is considering how best to incorporate reporting into performance and fiscal information collection requests, which will be included in the performance and fiscal PRA packages, or whether a separate information collection is needed.

The Department welcomes comments regarding the burden of additional reporting requirements, such as specifics about local areas utilizing pay-for-performance contract strategies; the service providers, the amount of contracts, duration, and monitoring and evaluation findings.

The Department expects to put performance and implementation requirements in place in the future.

§ 683.540 – What is the State’s role in assisting local areas in using Workforce Innovation and Opportunity Act Pay-for- Performance contract strategies?

This proposed section describes both allowable and required State activities related to WIOA Pay-for-Performance contract strategies.

The Department welcomes comments regarding use of independent evaluators and whether the cost of such evaluations is feasible within the amount of funds available to local areas for pay-for-performance contracts.

The Department also seeks comments on how the Department might facilitate local areas’ ability to conduct evaluations.

Further, sec. 116(h) of WIOA authorizes States to use non-Federal funds to incentivize use of WIOA Pay-for- Performance contract strategies for the delivery of training services or youth activities by Local Boards.

§ 683.700 – When can the Secretary impose sanctions and corrective actions on recipients and sub-recipients of title I Workforce Innovation and Opportunity Act funds?

This proposed section describes the procedures and circumstances under which the Department will impose sanctions or take corrective actions, as described in sec. 184(b) and (e), against States, local areas, and grant recipients and sub-recipients.

The Department seeks comments on appropriate sanctions and corrective actions in a variety of circumstances.

Part 684 – Indian and Native American Programs Under Title I of the Workforce Innovation and Opportunity Act

None

Part 685 – National Farmworker Jobs Program under Title I of the Workforce Innovation and Opportunity Act

None

Part 686 – The Job Corps under Title I of the Workforce Innovation and Opportunity Act

§ 686.310 – How are entities selected to receive funding to operate centers?

Proposed § 686.310 implements secs. 147(a) (2) and (a) (3) of WIOA, which contain new provisions to strengthen the Job Corps contracting process by requiring specific criteria that emphasize quality, performance, and accountability to be addressed as part of the selection process for center operators.

The Department welcomes comments on how best to embed a focus on quality, performance, and accountability into the procurement process.

Proposed paragraph (c) (5) is a new element in the selection process established in sec. 147(a) (2) (B) (i) (V) of WIOA, requiring that the criteria include the offeror’s ability to demonstrate a record of successfully assisting at-risk youth to connect to the workforce, including providing them with intensive academics and career and technical training.

The Department welcomes comments on how to assess potential offerors' past records in assisting at risk youth to connect to the workforce.

In order to prevent an entity from being penalized for the poor performance of the previous operator, proposed paragraph (e)(1) states that information will only be considered to be available for a PY for purposes of paragraph (d) if for each of the primary indicators of performance, all of the students included in the cohort being measured either began their participation under the current center operator or, if they began their participation under the previous center operator, were on center for at least 6 months under the current operator.

The Department invites comments on the issue of information availability, including the threshold for the point at which the performance of the center reflects the performance of the current operator.

Proposed paragraph (f) provides a transition provision for establishing the criteria that must be met for an operator to meet the requirements of proposed paragraph (d).

The Department invites comments on the approach to transitioning from the WIA to WIOA performance management systems.

§ 686.1000 – How is the performance of the Job Corps program assessed?

The Department will begin to incorporate the primary indicators and other measures that will drive the system towards attainment of the WIOA primary indicators, while still maintaining other shorter-term measures that will provide additional information that the Secretary believes is necessary to manage and evaluate the effectiveness of the Job Corps program.

The Department welcomes comments on this approach, and specifically on which short-term measures should be maintained in the new OMS system.

Part 687 – National Dislocated Worker Grants

§ 687.110 – What are major economic dislocations or other events which may qualify for a national dislocated worker grant?

Proposed § 687.110(a)(4) describes a qualifying event, permitting the award of a NDWG when a higher than average demand for employment and training activities for dislocated members of the Armed Forces, dislocated spouses of members of the Armed Forces on active duty, or members of the Armed Forces, exceeds State and local resources. Section 170(b) (1)(D)(i) of WIOA specifically limits the military spouses included in this analysis to “spouses described in sec. 3(15)(E) [of WIOA].” Implementing this exactly as stated in the statute would require applicants for these NDWGs to determine whether a specific subset of dislocated military spouses is driving the higher than average demand for services in an area. This would cause an unnecessary burden on the NDWG applicants. The Department intends to provide additional guidance about how higher than average demand will be defined for purposes of this section. The Department is exploring definitions that may include veterans’ unemployment in excess of the State’s unemployment rate, Unemployment Compensation for Ex-service members (UCX) data, and other similar administrative data sources.

The Department invites comments about the usefulness of relying on these and other data sources in determining how higher than average demand should be defined.

Part 688 – Provisions Governing the YouthBuild Program

§ 688.730 – What requirements apply to YouthBuild housing?

The Department specifically requests comments on the restrictive covenant requirement and its proposal to shorten the length of the covenant.

Part 651 – General Provisions Governing the Federal-State Employment Service System

None

Part 652 – Establishment and Functioning of State Employment Services

§ 652.3 – Public labor exchange services system. This section explains the minimum services that must be offered by the public labor exchange system.

The Department is seeking public comments on any issues or challenges in aligning labor exchange services described under WIOA with the labor exchange services provided by the ES.

§ 652.206 – May a State use funds authorized under the Act to provide applicable “career services,” as defined in the Workforce Innovation and Opportunity Act?

The Department is seeking comments on how services provided by the ES can be more aligned with other services in the one-stop delivery system and ensure participants can receive seamless services from the ES to other programs under WIOA.

§ 652.216 – May the one-stop operator provide guidance to State merit staff employees in accordance with the Act? This section clarifies that ES staff may receive guidance from a one-stop operator about the provision of labor exchange services, but that all personnel matters remain under the authority of the State agency. The only change proposed in this section is to add a reference to proposed § 678.500, which provides the requirements for the local MOU.

The Department seeks comment on whether any other changes are needed to allow the one-stop operator to ensure the efficient and effective operation of the one-stop center.

Workforce and Labor Market Information

The Department is interested in receiving comments from States that responded to the survey, and any other States that require additional data elements in quarterly wage reports, on the challenges and benefits of requiring additional data elements in the quarterly wage reports.

The Department is also interested in receiving comments from employers and payroll processors who provide occupational data for the quarterly wage records.

Part 653 – Services of the Employment Service System

None

Part 654 – Special Responsibilities of the Employment Service System

None

Part 658 – Administrative Provisions Governing the Employment Service System

Alternatives in Light of the Required Publication of Proposed Regulations

The Department considered and, where feasible, proposed to issue sub-regulatory guidance in lieu of additional regulatory requirements. This policy option has two primary benefits to small entities. First, guidance will be issued following publication of the rules, thereby allowing States, local areas, and small entities additional time to prepare their compliance efforts. Second, this level of guidance is more flexible in nature, allowing for faster modifications and any subsequent issuances, as necessary. The Department considered three possible alternatives:

- (1) To implement the changes prescribed in WIOA, as noted in this NPRM, thereby satisfying the statutory mandate; or
- (2) To take no action, that is, to attempt to implement the WIOA utilizing existing Workforce Innovation Act (WIA) regulations; or
- (3) To not publish regulation and rescind existing WIA final regulations and, thereby ignoring the WIOA statutory requirement to publish implementing regulations thus forcing the regulated community to follow statutory language for implementation and compliance purposes.

The Department requests comment on these or other alternatives, including alternatives on the specific provisions contained in this NPRM, with the goal of ensuring a thorough consideration and discussion at the Final Rule stage.

Analysis Considerations

Throughout the benefit-cost analysis, the Department made every effort to identify and quantify all potential incremental costs associated with the implementation of WIOA as distinct from what already exist under WIA, WIOA's predecessor statute. Despite our best estimation efforts, however, the Department might be double-counting some activities that are already happening under WIA. Thus, the costs itemized below represent an upper bound of the potential cost of implementing the statute. ***The***

Department requests comment on its cost estimates, specifically in terms of whether it has accurately captured the additional costs associated with the implementation of WIOA.

In addition to this NPRM, the Departments of Labor and Education have proposed a joint NPRM to implement specific requirements of WIOA that fall under both Departments' purviews. While we acknowledge that these proposed rules and their associated impacts may not be wholly independent from one another, we are unaware of any reliable method of quantifying the effects of this interdependence. Therefore, our analysis does not capture the correlated impacts of the benefits and costs of this proposed rule and those associated with the other NPRMs.

Department requests comments from the public about the appropriateness of this assumption.

The Department invites comments regarding the assumptions used to estimate the level of additional effort required for the various proposed new activities, as well as data sources for the wages and the loaded wage factors that reflect employee benefits used in the analysis.

The sanctions will alter Federal transfer payments. Transfer payments, as defined by OMB Circular A-4, are payments from one group to another that do not affect total resources available to society.

The Department requests comment and data that would allow for estimation of the transfer that would result from the sanctions provision.

Migrant and Seasonal Farmworker Housing

The housing data currently available to DOL is limited. The Department does not collect or track the number of agricultural housing units nationally that fall under the ETA versus the OSHA standards. To better understand the impact of the proposed regulations, the Department would like to know: 1) the approximate number of agricultural housing units in the United States provided by agricultural employers for farmworkers; 2) the approximate percentage of the total farmworker housing units that currently fall under the ETA Standards set forth in 20 CFR 654; and 3) the estimated cost of bringing those housing units from the ETA Standards into compliance with the OSHA Standards.

The Department would appreciate public feedback on the aforementioned data elements.

Specifically, it would be helpful for DOL's analysis if: 1) there are State Workforce Agencies or States that would share any data on the total number of employer-provided agricultural housing units in the State and the percentage of those that are subject to the ETA Standards; and 2) agricultural employers would furnish estimated costs for bringing their farmworker housing units from ETA to OSHA Standards.

The Department appreciates any such information that could assist in the development of the overall impact analysis.

The Department was unable to quantify the benefits associated with the proposed rule because of data limitations and a lack of operational (WIOA) data or evaluation findings on the provisions of the proposed rule. Thus, the Department is unable to provide monetary estimates of several important benefits to society, including the increased employment opportunities for unemployed or under-employed U.S. workers, benefits of colocation of Wagner-Peyser Services, enhanced ETP process, regional planning, and evaluation of State programs.

The Department invites comments regarding possible data sources or methodologies for estimating these benefits. In addition, the Department invites comments regarding other benefits that might arise from the proposed rule and how these benefits could be estimated.

Joint DOL-ED NPRM

Part 676 – Unified and Combined State Plans under Title I of the Workforce Innovation and Opportunity Act – Submission of Unified and Combined Plans for Outlying Areas

The Departments specifically request comments on the options they propose, as well as any additional options, and which option the Departments should adopt.

Part 677 – Performance Accountability under Title I of the Workforce Innovation and Opportunity Act

Given the use of the term “State” in sec. 116 and the differing definitions for that term for the various core programs, ambiguity exists within WIOA as to the applicability of the performance accountability system requirements with regard to the core programs administered by the Department of Labor under title I of WIOA. Nevertheless, WIOA is clear that the core programs funded under titles II and IV are subject to these requirements. For this reason, there are two options to resolve this potential inconsistency, thereby ensuring that the performance of the core programs in the outlying areas can be measured to ensure programmatic effectiveness.

The Departments are seeking comments on the two options laid-out in the NPRM, as well as any additional options, and which option the Departments should adopt.

The Departments are seeking feedback on the appropriate point of receipt of staff-assisted services, which has not been a commonly defined point under WIA.

They argue that a stronger delineation of that measurement point, which would be the same for the Wagner-Peyser Employment Services, WIOA adults, and WIOA dislocated workers, would enhance comparability across States.

The Departments seek comments on whether an individual’s continued use of self-service offerings should extend the individual’s exit date, or if a participant should be considered as having exited after the final staff-assisted service. The self-service component is limited to WIOA title I programs and the Wagner-Peyser Employment Services.

The Departments are seeking comments on the costs and benefits of taking a program-exit approach or a common exit approach in defining “exit.”

Proposed § 677.155(a) (1) identifies the six primary indicators that will be applied to the core programs identified in sec. 116(b) (3) (A) (ii) of WIOA. The DOL is also planning to leverage these indicators to streamline reporting for other DOL programs, such as the JVSG program, and other discretionary grant programs.

To that end, the Departments invite comments specific to this issue.

The Departments seek public comment on whether and how to collect information on the quality of employment and how WIOA's programs help employed and underemployed individuals find new or better jobs.

The Departments seek comment on the advantages and disadvantages of collecting or reporting the employment retention rate in addition to the employer rate.

Proposed § 677.155(a)(1)(iv) implements WIOA's fourth statutory indicator and measures post-secondary credential attainment and high school completion of program participants during participation in the program or within 1 year after exit.

The Departments specifically seek comment on clarifications that will be necessary to implement this indicator.

Proposed § 677.155(a)(1)(v) measures the percentage of participants who, during a PY, are in education or training programs that lead to a recognized post-secondary credential or employment, and who are achieving measurable skill gains, which the Departments are defining as documented academic, technical, occupational or other forms of progress, toward the credential or employment.

The Departments seek comments on the proposed indicator and request comments on the ways States can measure and document participants' measurable skill gains in a standardized way, including whether time intervals are required and what time intervals might be.

The Departments also seek comments on whether the performance targets for this indicator should be set at the indicator (i.e., measurable skill gains) or documented progress measure (e.g., attainment of high school diploma) level.

Proposed § 677.155(a) (1) (vi) implements the sixth statutory primary indicator related to **effectiveness in serving employers**. Under WIOA, the Departments are required to consult with stakeholders and receive public comment on proposed approaches to defining the indicator. Based on the consultations, the Departments have established several potential approaches to measuring the effectiveness of serving employers, including potential measures that could be used.

Understanding that an array of programs provide services to employers:

The Departments seek public comment on several options outlined in the NPRM as well as additional ways to measure the core programs' effectiveness in serving employers. The Departments also seeks comments on how to best measure the Wagner-Peyser Employment Services' effectiveness in serving employers.

The Departments are also considering the addition of a supplemental customer service measure, which would assess the quality of services provided to American Job Center customers. This measure would not be a primary indicator of performance, but would be used as a tool for tracking the quality of the customer experience.

The Departments seek comment on how to structure such a measure (e.g., using the net promoter score) and whether the inclusion of such a measure would be valuable.

Proposed § 677.170(b) requires that the Secretaries will reach agreement with the States on negotiated levels of performance based on the factors in sec. 116(b) (3)(A)(v) of WIOA, and proposed § 677.170(c) provides that the Secretaries will disseminate a statistical adjustment model that will be used to make the adjustments in the State adjusted levels of performance for actual economic condition and characteristics of participants including the factors required by WIOA sec. 16(b) (3) (A) (viii). The statistical adjustment model must be developed after consultation with specified stakeholder groups, including appropriate external experts.

The Departments request comment on whether any additional factors beyond those in the statute should be considered in developing the model, and the best approach to updating the model as necessary.

Proposed § 677.190(c) outlines the three criteria that will be used to assess a State's performance at the end of a PY: an overall State program score, an overall State indicator score, and individual indicator scores.

The Departments seek comment on whether to use a weighted average or a straight average for purposes of each overall indicator score.

Proposed § 677.190(d) establishes two thresholds for performance failure.

The Departments seek comment on the implications of the proposed methodology, including the three criteria and associated thresholds for failure established under this proposed regulation (i.e., the overall State indicator score [90 percent of adjusted goal], the overall State program score [90 percent of adjusted goal], and the individual indicator scores [50 percent of adjusted goal]).

The Departments also request comments generally on how to define "fails to meet the State adjusted levels of performance" and specifically on the methods described above.

The Departments seek comment on the specific timelines for reporting outcomes on the core indicators of performance as well as the timing for using the annual State report to determine success or failure against adjusted levels of performance.

The Departments seek comment on which State report should be the first annual State report used to assess performance against the State's adjusted levels of performance.

To the extent possible, the Departments would like to tie ultimate imposition of financial sanction with the performance improvement plan process, such that States have the chance to avoid financial sanction if they successfully execute the reforms included in their performance improvement plan.

The Departments welcome comment on how best to accomplish this goal.

In addition to timelines for calculating a State's performance against its adjusted levels of performance:

The Departments seek comment on the timelines for implementing the full accountability system to include determining performance failure for sanctions.

Because WIOA introduces new indicators on which no historical data exist, there is a need to establish baseline benchmarks from which to establish adjusted levels of performance under WIOA. For this reason:

The Departments seek comment on the transition timing of the performance accountability system as WIOA is implemented.

Proposed § 677.195(b) clarifies that if, in the same PY, a State fails under proposed § 677.195(a)(1), failure to report in any given PY, and fails under proposed § 677.190(a)(2), failure to meet adjusted levels of performance for 2 consecutive program years, then sanctions in the amount of 5 percent will be applied for each of these failures. The maximum sanction therefore that could be applied to a State in any given PY is 10 percent of the maximum available amount of the Governor's Reserve allotment – for failure to submit a performance report and for failure to meet adjusted levels of performance for 2 consecutive program years.

The Departments are seeking comment on this interpretation of the language under WIOA sec. 116(f), as well as the implications of this proposed regulation.

Proposed § 677.195(c) clarifies the statutory requirement in sec.116 (f) (1) (B) of WIOA that a sanction be applied until such a time as the Secretaries of Education and Labor determine that performance levels have been met and the State annual performance reports have been submitted.

The Departments also request comments on the specific approach outlined above, as well as generally on 1) how to define "fails to meet the State adjusted levels of performance," and 2) how to operationalize the Departments' approach to applying sanctions for both failure to submit a performance report and performance failure (i.e., a maximum sanction of 10 percent), including when sanctions should be applied.

Proposed paragraph (b), in accordance with WIOA, outlines the required corrective actions for local areas that continue to fail to meet performance indicators for 3 consecutive years. A local area that failed to meet adjusted levels of performance on required performance indicators for a third consecutive year is subject to reorganization, which would include the certification of a new Board, the exclusion of underperforming service providers or partners, and other actions the Governor deems appropriate.

The Departments request comments regarding what other actions should be considered in this circumstance.

Eligible Training Providers

The Departments are seeking comment on how the Departments may best support ETPs in meeting the requirements of this section as well as how to make the ETP reports a useful tool for WIOA participants, ETPs, interested stakeholders, and the general public.

Consistent with proposed § 680.470, and as provided below in proposed paragraph (b) of the section, **States are only required to provide performance information on registered apprenticeship programs if these programs voluntarily submit performance information.** DOL is considering ways to support interested registered apprenticeship programs in the collection and dissemination of performance data.

The Department seeks comment on ways to support registered apprenticeship programs that are interested in providing performance information, and what that information might look like.

Proposed § 677.230(a) (3) identifies additional requirements that the ETP performance reports contain performance information on the average cost-per-participant for participants who received training services and disaggregated by type of training entity for the PY and three preceding PYs. The Departments interpret this requirement to be applicable only in prospective years; this would not apply retroactively, and does not require ETPs to provide information for these reports in years prior to being established as an ETP.

The Departments seek comment on the best way to calculate cost-per-participant. Any data provided for initial eligibility determinations should be done consistent with established parameters under 20 CFR part 680, subpart E.

Proposed § 677.230(e) (2) establishes that the designated State agency or State entity responsible for these reports would carry the responsibility for the creation and dissemination requirements found in this subsection. The Departments recognize that the ETP performance reports are a departure from the previous reporting mechanisms related to ETPs as they existed under WIA.

The Departments are seeking comment on specific aspects of this new performance reporting requirement as it relates to reporting burden for training providers under this requirement.

The Departments are interested in comments on ways the Departments may reduce this burden for training providers as well as how the Departments may leverage this performance reporting requirement to be of more use to the ETPs.

The Departments would like specific comments on what would facilitate the reporting process to make it easier for ETPs to report on multiple programs of study, including programs that they would like to be on the list but do not have currently any WIOA funded participants enrolled.

Part 678 – Description of the One-Stop System under Title I of the Workforce Innovation and Opportunity Act

§ 678.315 – The Departments are aware that some one-stop partner programs are unable to have a physical presence in every affiliated site. Partner programs and the Local Board can negotiate physical presence at affiliated sites, and this presence may be below 50 percent for any one partner program.

The Departments seek feedback, particularly from workforce programs outside WIOA title I and III, on whether the proposed requirement that other partners be present more than 50 percent of the time creates an impediment to participating in the one-stop system, and whether any other changes would facilitate colocation.

§ 678.430 – What are career services?

The Departments seek specific comments about our proposal regarding the identification and inclusion of TANF employment, related support services and TANF intake functions as “career services,” that are required to be provided locally in one-stop centers.

§ 678.605 – How is the one-stop operator selected? Proposed § 678.605 requires the one-stop operator to be selected through a competitive process conducted not less than every 4 years.

The Departments seeks comments regarding the length of time required between competitions for operators. The Departments also seek comments regarding the nature and extent of the competitive process outlined in the proposed regulations.

§ 678.615 – Can an entity serving as one-stop operator compete to be a one-stop operator under the procurement requirements of this subpart? Proposed § 678.615(a) states that Local Boards may compete to be selected as a one-stop operator only if appropriate firewalls and conflict of interest policies and procedures are in place.

The Departments seek comments on whether and how a sufficient firewall could be established in such a competition, whether alternate entities could conduct the competition, and who those entities might be.

§ 678.620 – What is the one-stop operator’s role? Proposed § 678.620(a) describes the role of the one-stop operator without prescribing a specific and uniform role across the system. The proposed minimum role that an operator must perform is coordination across one-stop partners and service providers. Additionally, the proposed paragraph (b) prohibits one-stop operators from assuming functions that are inherently the responsibility of the Local Board under proposed § 679.370.

The DOL seeks comments as to whether all of the functions listed in proposed paragraph (b) are accurately described as inherent to the responsibility of a Local Board.

As the one-stop system evolved under WIA, some of the Local Board responsibilities may have changed or been devolved to the operator or fiscal agent as well.

§ 678.700 – What are one-stop infrastructure costs? Proposed § 678.700 provides the definition for infrastructure costs based on sec. 121(h) (4) of WIOA. In addition to those items, the section adds common one-stop delivery system identifier costs. These costs are those associated with signage and other expenses related to the one-stop common identifier as required by sec. 121(e)(4) of WIOA.

The Departments seek comments as to other common identifier costs, or other types of costs, to include in the definition of infrastructure costs.

§ 678.705 – What guidance must the Governor issue regarding one-stop infrastructure funding? Proposed § 678.705 addresses the requirement in sec. 121(h) (1)(B) of WIOA for the Governor to issue guidelines to State programs and guidance to local areas regarding infrastructure funding.

The Departments seek comments about the types of information or requirements local areas would like to see included in guidance issued by the Governor.

§ 678.720 – What funds are used to pay for infrastructure costs in the local one-stop infrastructure funding mechanism? Proposed § 678.720 explains the funding that one-stop partners can use to pay for infrastructure cost contributions. If a State eligible agency were to delegate to a local entity or a consortium of local entities the authority to serve as the local one-stop partner pursuant to proposed § 678.415(b) and (e), the entity or consortium could contribute local administrative funds for title II of WIOA or the Perkins Act, respectively, to the infrastructure costs in lieu of a contribution from the State's administrative funds from its Federal grants. The goal of providing the State agencies with this flexibility is to enable them to meet their responsibilities for paying one-stop infrastructure costs in a manner that best allows them to meet their responsibilities as one-stop partners and grantees under title II of WIOA or the Perkins Act.

The Departments seek public comment on whether the proposed regulation would achieve this goal.

§ 678.740 – What funds are used to pay for infrastructure costs in the State one-stop infrastructure funding mechanism? Proposed § 678.740 describes the funds that one-stop partners can use to pay for infrastructure costs. **The goal of providing the State agencies with this flexibility is to enable them to meet their responsibilities for paying one-stop infrastructure costs in a manner that best allows them to meet their responsibilities as one-stop partners and grantees under title II of WIOA or the Perkins Act.**

The Departments seek public comment on whether the proposed regulation would achieve this goal.

§ 678.750 – When and how can a one-stop partner appeal a one-stop infrastructure amount designated by the State under the State infrastructure funding mechanism? Proposed § 678.750 requires an appeals process, as outlined in WIOA sec. 121(h) (2) (E), to be established by the Governor and proposes similar principles regarding timely resolution as those seen under other appeals processes, such as the WIA regulations at 20 CFR 661.280.

The Departments seek comments regarding the proposed State infrastructure funding mechanism, and in how local areas with existing successful infrastructure cost agreements have funded these costs and what factors contributed to local areas' success.

One-Stop Certification

Proposed part 678, subpart F implements the requirements in sec. 121(g) of WIOA that the Local Board certify the one-stop center every 3 years. The certification process is important to setting a minimum level of quality and consistency of services in one-stop centers across a State. The certification criteria allow States to set standard expectations for customer-focused seamless services from a network of employment, training, and related services that help individuals overcome barriers to becoming and staying employed.

The Departments seek comments on how local areas can best measure the customer satisfaction of individuals who utilize American Job Centers as an aspect of effectiveness.

§ 678.800 – How are one-stop centers and one-stop delivery systems certified for effectiveness, physical and programmatic accessibility, and continuous improvement? Proposed § 678.800(a)

requires that State Boards establish criteria and procedures for certification, and allows Local Boards to use additional certification factors in order to respond to labor market, economic, and demographic conditions and trends in the local area.

The Departments seek input on other important factors in making one-stop centers operate more efficiently and effectively, both for consideration as one-stop certification criteria and for general program implementation and management.

§ 678.900 – What is the common identifier to be used by each one-stop delivery system?

Proposed § 678.900(a) designates the name “American Job Center” as the common identifier for the one-stop delivery system.

The Departments also specifically request that the public or any interested stakeholder provide feedback and input as comments on the proposed “American Job Center” common identifier designation.

Rulemaking Analyses and Notices

The Departments request comment on the costs and benefits of this NPRM with the goal of ensuring a thorough consideration and discussion at the final rule stage.

The enforcement methods described in the proposed joint rule are a reflection of prescribed WIOA requirements and entity size should not in and of itself create alternative methods for compliance or different time periods for achieving compliance.

Although the Departments have not determined sufficiently valid reasons for altering compliance timeframes in addition to those described in the proposed rule for small entities, they seek comment on this issue.

The Departments’ initial impact analysis has concluded that by virtue of WIOA’s prescriptive language, particularly the requirement to publish implementing regulations within 180 days, there are no viable regulatory alternatives available other than those discussed above.

The Departments request comment on these or other alternatives, including alternatives on the specific proposed provisions contained in this NPRM, with the goal of ensuring a thorough consideration and discussion at the final rule stage.

Analysis Considerations

The Departments derived their estimates by comparing the existing baseline, i.e., the benefits and costs associated with current practices, which at a minimum, must comply with the 2000 WIA Final Rule (65 FR 49294, Aug. 11, 2000), against the additional benefits and costs associated with implementation of the provisions contained in this WIOA-required joint NPRM.

The Departments request comment on our cost estimates, specifically in terms of whether we have accurately captured the additional costs associated with implementation of WIOA.

In addition to this joint NPRM, the Departments plan to propose separate NPRMs to implement program-specific requirements of WIOA that fall under each Department's purview; see the Executive Summary section of this NPRM for details. While the Departments acknowledge that these proposed rules and their associated impacts are not wholly independent from one another, we are unaware of any reliable method of quantifying the effects of this interdependence. Therefore, this analysis does not capture the correlated impacts of the benefits and costs of this proposed joint rule and those associated with the other NPRMs.

The Departments have made an effort to ensure there are no duplication of costs and benefits between this and the other NPRMs. We request comments from the public about the appropriateness of this assumption.

The Departments invite comments regarding the assumptions used to estimate the level of additional effort required for the various proposed new activities, as well as data sources for the wages and the loaded wage factors that reflect employee benefits used in the analysis.