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June 15, 2015

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

RE: Workforce Innovation and Opportunity Act; Notice of Proposed Rulemaking (RIN 1205-AB73) & Joint Rule for Unified and Combined State Plans, Performance Accountability, and the One-Stop System Joint Provisions; NPRM (RIN 1205-AB74; 1830-AA21)

Dear Ms. Gagliardi,

On behalf of the National Association of Workforce Boards (NAWB), I am pleased to submit the below comments on the proposed regulations implementing the Workforce Innovation and Opportunity Act (WIOA). These comments simultaneously address regulations proposed by the Department of Labor (DOL) Employment and Training Administration (ETA), RIN: 1205-AB73) and joint regulations proposed by ETA and the Department of Education (ED), RIN: 1205-AB74; 1830-AA21.

NAWB represents approximately 600 Workforce Investment Boards (WIBs) and their 12,000 business members that coordinate and leverage workforce strategies with education and economic development stakeholders within their local communities, to ensure that state and local workforce development and job training programs meet the needs of employers.

Given the scope of the proposed regulations, this comment seeks to look at critical areas for consideration with regards to WIOA implementation. NAWB has encouraged individual members to submit comments about potential impacts with individual states and municipalities.

Overall Implementation: Building Workforce Development as a System

Changes to the workforce development system were long overdue. The inclusion of innovation in the title of the legislation addressing these changes suggests that the path forward will encourage stakeholders in workforce development to consider new alternatives that can lead to dedicated, improved outcomes.

NAWB applauds Congress for its vision of workforce development as a “system.” This decision implies that all the investments of the various states and local areas must contribute to, in part:

Supporting the alignment of workforce investment, education and economic development systems, in support of a comprehensive, accessible, and high-quality workforce development system...providing workforce development activities that increase employment, retention, and earnings of participants, and that increase post-secondary credential attainment and as a result, improve the quality of the workforce, reduce welfare dependency, increase economic self-sufficiency, meet skill requirements of employers and enhance productivity, and competitiveness of the nation.¹

In order to achieve this high bar, the forthcoming regulations must look at individual sections with an eye towards fluency and consistency, ensuring that all the elements of workforce development are incentivized to have both open dialogue and partnership. While the rest of these comments are devoted to specific sections of the proposed regulation, a common concern is the many places within the proposed regulations that provide an opportunity for states to examine their own policies – not in the light of just WIOA funds, but the total investments states make in workforce development.

NAWB believes that when state policies mandate a percentage of WIOA funds be spent on “training,” they fail to consider the benefits of leveraging other resources such as Pell grants and constrict the ability of local boards to make investments in what they believe are strategic given the situations they find themselves at the local or regional level. The workforce development strategy must be dynamic in order to meet the needs of a rapidly changing labor market.

Since state boards have a mandate to align all investments in workforce, the sum total of all investments needs to be considered. In light of the continued erosion of federal funding, the continued mandate to operate physical one-stops and the critical work outlined for local workforce boards, NAWB asks the Employment and Training Administration (ETA) to emphasize that the efficiency of the workforce development system not be borne by WIOA dollars alone.

Given that parts of WIOA have latitude for additional requirements to be added at both the state and local levels, NAWB believes that continued ETA reminders of the need for flexibility in states and municipalities is critical. Equally important are considerations of changes in three key areas of the regulation: local considerations, training consideration, and performance measures.

Local Considerations

Within the workforce development system, ambiguity can be detrimental to all stakeholders. Nowhere is this more apt than in sections addressing the role of consultation and regional planning.

¹ U.S. Government Publishing Office. *Workforce Innovation and Opportunity Act; Notice of Proposed Rulemaking*. 80 FR 20691 (April 16, 2015). Available online at <http://www.gpo.gov/fdsys/pkg/FR-2015-04-16/pdf/2015-05530.pdf>.

Clarity on Consultation (§ 679.230)

NAWB requests that ETA offer more clarity with regard to what constitutes "consultation" between/among the Governor and local boards and the Governor, CLEOs and local boards. Experience has shown that individual consultation has improved outcomes for both the chief elected official and the local board. Grouping consultation undermines the integrity of the process. True consultation requires one-to-one meetings between the governor and each individual local area.

Regional Designation (§ 679.210)

NAWB believes that there are few sections of the legislation as important as this section. It is critical to local workforce boards, as regional planning/collaboration is a time consuming process to: 1) understand the region; 2) articulate the needs of the various industry sectors; and 3) design strategies inside the capacity of the regional learning providers. Regional plans suggest that the participating entities also assume the work of advocating for the regional needs to augment the capacity of the region to respond to the business needs.

Therefore, NAWB is advocating that the level of consultation in this section be increased to require an MOU between the Governor and the local elected officials. The MOU would cover the rationale for the regional designation and a statement of the expectations of both the Governor and the local elected officials in supporting the subsequent identification of strategies for the regional workforce development system, as identified in the state and local version of the unified plans. Few requirements necessitate such a high level of formal interaction, however, experience dictates this issue has widespread ramifications justifying its need.

Criteria to Establish a Board (§ 679.350)

WIOA is explicit on criteria to establish a board, including with regard to membership on the local boards. Additional regulations at the state level are simply burdensome. NAWB urges ETA to include language that limits the criteria the State can add to WIOA language. Moreover, NAWB requests ETA also provide clarity on what is deemed "business" representation.

NAWB is concerned with the inconsistent consideration of local members from chambers, the healthcare industry, and other "industries." In many instances, hospitals are both the major employer and 501(c)(3) registered corporate entities. While non-profit hospitals are a business, some states and some locals do not allow any 501(c)(3) to count as business. NAWB would request that ETA specifically include language that indicates industries dominated by 501(c)(3) corporation status, but who meet criteria of a major employer as defined by large numbers of employees, total wages, and/or growth be counted as business representatives on the WIB. In the case of "local" chambers, they often represent many of the region's small employers and as a result serve as an important representative voice for small business. NAWB requests that ETA recognize this unique circumstance and specify that they, too, be counted as business representatives on the WIB.

NAWB also recognizes that "meds & eds" cover many regions. NAWB requests clarification on whether educational institutions can also serve as business representatives on the WIB. Major universities have large employee needs beyond the classroom; they are a significant contributor to the region's wage pool and can drive the region's skill needs in many occupations (e.g.

administrative work through high-skilled IT). NAWB is requesting that ETA specifically allow local boards to consider their major university a business representative on the WIB, provided the university has employees outside their faculty (including those in their research facilities, business incubators, commercialization offices and incubators) that place them in the top ten employers in the region.

Stakeholder Convening (§ 679.310)

This section requires board members to actively participate in convening system stakeholders. Many volunteers do not have the time or expertise in this area, and may need to rely on professional staff. In NAWB's view, this section should be deleted.

Multi-functions in a Single Organization (§ 679.430)

NAWB recognizes that in some areas of the country, the workforce board has to serve multiple roles, such as administrative agent, fiscal agent, education provider and one-stop operator. NAWB would request additional clarity regarding what appears to be the need for separation of responsibilities. NAWB would argue that without such clarification, monitors might fall back into defining separations of responsibility through a review of financial record keeping. In NAWB's view such a review is unnecessary and requires resources that could otherwise be devoted to the board mission. Instead, NAWB asks ETA to clearly define what is required in order to prevent monitors from utilizing this burdensome test.

Fiscal Agent (§ 679.420)

NAWB believes that under WIA, the role of the fiscal agent was more assumed than delineated and the proposed language for WIOA is a positive regulatory inclusion on the part of ETA. NAWB is still concerned about undue influence of the fiscal agent in situations where the local board is not an independent 501(c)(3). "Host" entities who house the local board's financial management have used their position of designation by the CLEO and have charged exorbitant costs under various cost-allocation schemes. NAWB expects guidance and support from ETA in developing equitable policies as to the cost of the financial support provided to local boards when the board has no recourse to actions by the CLEO in designating a fiscal agent. Further, NAWB disputes the generally accepted belief that local boards cannot indemnify CLEOs through insurance products. NAWB believes that recognition by ETA of the potential for liability assumption would be beneficial in helping the CLEOs make designation decisions.

Local and Regional Plans (§ 679.500)

The planning requirements in this section, if properly implemented, stand to be one of the largest, and most overlooked, improvements in WIOA. The potential to develop a deep understanding of the local/regional labor market and the application of that developed analysis to the local/regional workforce development system is extremely powerful in the investment strategies deployed by local boards for funds under their control. This analysis is also critical in helping local and state policy-makers in their investment decisions of funds outside the direct control of the local/regional board(s).

NAWB, however, is concerned regarding the amount of additional regulation that states might impose in the planning process. While ETA in earlier comments on the implementation of WIOA issued a caution to Governor's about the extent of their adding requirements, NAWB

suggests that ETA work with the Inter-Governmental Organizations to develop guidance on the balance between planning and an execution that leads to positive impacts for job seekers and businesses. These two create the dynamic that is the US labor market and the ability to rapidly react to changes in that market is essential for local workforce boards. NAWB believes that success of the workforce system will in large measure be its agility.

State Board Planning (§ 679.130(f)(1))

NAWB urges ETA to consider adding an active review of state policies that encourage innovation and as well as hinder innovative strategies that are developed at the local level. The proposed rule provides many sections where the state can be prescriptive of what the local board does, and this section presents an opportunity for the state board to provide scrutiny to policies at their level. NAWB believes the Act has innovation and opportunity in the title for very conscious reasons. ETA itself cautions against over regulation by the state.

Training Considerations

Training Services (§ 679.600)

NAWB strongly supports exempting on-the-job, customized and incumbent worker training from the eligible training provider process. Similarly, NAWB concurs that such training should be subject to performance reporting. With regard to training services, NAWB has three additional comments:

- 1) NAWB believes that many local boards have successfully experimented with providing short-term and/or on-line certificate/industry recognized credential training. This innovation allows individuals to continue to work or seek work at the same time they increase their competitive position in the market. NAWB does not expect that this approach should be exempt from performance reporting. NAWB believes that ETA should clarify that if a local board is using short-term and/or eLearning assisted "training," that these training services should be regarded as being provided by the local board, and these approaches should be exempted from the eligible training provider process. NAWB accepts that local boards would not be subject to reporting the outcomes (e.g. entered employment rates, wage gains etc.) for such training to comply with WIOA's customer choice mandate. The ability for local boards to allow individuals access to eLearning-facilitated certification acquisition is in keeping with WIOA's intent to up-skill the workforce and achieve, for the job seeker, a more competitive skills set and retained employment or wage gains sufficient for the individual to be self-sufficient or achieve significantly enhanced economic security.
- 2) NAWB believes that ETA should work with the Inter-Governmental Organizations to develop guidance for the active inclusion of out-of-area and eLearning options into the training approaches of local/regional boards. § 680.520 allows states to establish agreements that enable out-of-area training providers to be part of their own ETPLs, which promotes a customer choice focus. Given the practicality of how these inter-state agreements might be obtained, NAWB worries that there may be unnecessary lost time in responding to monitoring findings that might arise regarding the level of specificity in inter-state agreements and prefers guidance be developed with help from the Inter-Governmental Organizations.

- 3) NAWB supports the exclusion of on-the-job training and customized training providers on the Eligible Training Provider List (ETPL) as these should be matters of negotiation between the local/regional board(s) and the affected business entity(ies). NAWB understands and expects that performance outcome reporting would be a condition of this exemption.

Customer Choice (§ 680.340)

NAWB does not believe this section speaks effectively to concept of "customer choice." Individuals seek education/skills because they believe it will help them be more competitive in the labor market. Unless ETA and the Department of Education (ED) commit serious efforts to develop more extensive information regarding the learning providers, individuals seeking these offerings will continue to be ill informed. Posting information about eligible trainers has not proven to assist the learner. Few providers choose to go through the cumbersome process to become listed on the ETPL, making the lists unrepresentative of the vendor choices actually in the market. This section does little to rectify that concern.

Eligible Providers (§ 677.230 and § 680.410)

NAWB is supportive of the discussion and explanation in these sections. Customer choice requires sufficient information for both the local board and the potential trainee/job seeker to be able to make an informed choice. NAWB would urge ETA to consider the work of local boards that already have "scorecards" developed before ETA embarks on developing their own forms. We also suggest that the need for higher levels and higher volume of data necessitates ETA's continued support of technical upgrade grants to states.

Training Services (§ 680.760)

NAWB is seeking clarity in regard to the applicable categorization of training services applied to workers whom the local board determines are at risk for lay-off or business closure. § 680.760 suggests that one characteristic of customized training is that "...the employer pays a significant cost of the training, as identified by the Local Board in accordance with WIOA sec. 3(14)."

Given that much of the work of local boards is in conjunction with employers through various industry sector forums, NAWB sees a scenario where workers in a business are determined to be vulnerable to mass lay-off or closure; have the basic skills to transition to occupations in demand but may lack a preferred credential and/or industry recognized certification. These persons would be eligible for Rapid Response as a result of the determination of their being at-risk, and could clearly benefit from skill development, but would lack the employer commitment to pay a significant portion of the training cost. Customized training seems the most appropriate classification since the in-demand industry sectors would have stipulated or could stipulate that the training was necessary to allow the impacted individuals a more competitive position in the market. NAWB specifically requests that ETA include language that exempts the employer match for individuals to receive customized training, when they are determined by the local board to be "at-risk" for lay-off.

The positive economic impact of such a ruling is obvious through reduction in the length of unemployment and more immediate wage earnings. There is no way to estimate the savings at this point since there would be unknown factors that apply to a specific situation/locale.

Nonetheless, NAWB believes that this is a good policy that honors the intent of rapid response to "plan for and respond to situations as quickly as possible."

Incumbent Worker Definitions (§ 689.770)

This section requires individuals be employed at a company for 6 months to be eligible for incumbent worker training. We suggest this requirement be eliminated because of its obtrusiveness in accessing employer records and because employers will want all of their employees to receive necessary training, not just those who have been on the job for six months.

Out-of-School Youth Definition (WIOA § 129(a)(1)(B)(viii))

The law states that an eligible out-of-school youth includes "A low-income individual who requires additional assistance to enter or complete an educational program or to secure or hold employment." WIOA regulations should make it clear that a youth enrolled in GED training counts as an out-of-school youth.

Performance Measures

Performed Successfully (§ 679.260)

NAWB believes that ETA should provide clarity that "met" standards means hitting 80% or more of the negotiated standard, as has been the criteria under the Workforce Investment Act. A variety of factors might make hitting a specific performance number difficult, and a degree of flexibility should be included in the regulations.

Addition of Self-Employment to "Successful Outcomes" (WIOA Section 134(a)(3)(A)(i))

The law allows states to execute a variety of programs, including microenterprise and entrepreneurial training. However, the performance measures required by DOL cannot track self-employment, creating a barrier for jobs training centers to provide entrepreneurial training because they cannot count someone who starts a business as a "successful" employment outcome. Although the DOL has encouraged offering entrepreneurial training via guidance (TEGL 12-10), without the performance metrics change, adoption will remain lackluster.

DOL should use WIOA implementation to change the performance measures to include starting a business as a successful employment outcome to encourage the national network of centers to provide this important training. Tracking the outcome would be simple; a list of proposed measures could include:

- Obtaining a business tax ID and/or proof of business income or revenue
- Obtaining business certifications or licenses (Federal, state, or local)
- Obtaining a business loan or establishing business bank accounts
- Tax filings showing business operation and business income
- Proof of completion and/or certification document from business training organization

Both the proposed rule and WIOA (Section 134) address the need for "an examination of how the Local Board will promote entrepreneurial skills training and microenterprise services." As a

result, it is essential to re-evaluate the performance metrics in order to properly promote entrepreneurial skills training and microenterprise services.

Measuring Business Effectiveness (§ 677.155(a)(1)(vi))

NAWB believes that a well-designed customer satisfaction measure is a primary indicator of service quality for local operations. Prior efforts funded by ETA regarding quality in service delivery and the ability to compare satisfaction levels across industries were ahead of WIOA's current call for a business effectiveness measure. Many NAWB local members still conduct customer satisfaction surveys with their business clients, and, in NAWB's view, enhancing these efforts rather than beginning the chase for a new measure(s) provides an opportunity for quick implementation.

NAWB encourages members to periodically conduct focus groups with their customers, both job seekers and businesses, to help fill in information gaps that short surveys do not always reveal. WIOA's specific listing of possible business services provides a way to catalog what business values and is valued in any transaction.

Employee Retention Tied to Employer Identification Number (FEIN) (§ 677.155(a)(1)(vi))

NAWB does not believe this is a true indicator of the satisfaction with the placement transaction. Jobs are often not what we expected and employees often do not perform at the level of their interview. Countless books and conferences have been developed that address the "best" hiring process. Employee retention tied to a FEIN should not be used as a means to measure business service performance, except in instances where the employer has a demonstrated history of poor retention and the local board continues to deal with the business.

Repeat/Retention Rates for Employer Use of Core Programs (§ 677.155(a)(1)(vi))

NAWB sees potential in this rating, but is concerned with the data collection and application of the measure. How are we to know if an employer chooses to advertise elsewhere for employees rather than list with the local AJC? Local boards cannot be expected to develop market monitoring tools that would track all postings/hires by FEIN. Secondly, while repeat business is an indication of satisfaction, it may be that the employer lists their vacancies as a matter of course and has little interest in actually taking AJC referrals.

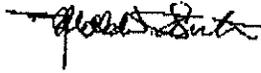
Percentage of Employers Using Core Programs (§ 677.155(a)(1)(vi))

Similarly, NAWB believes this measure might have viability, and note that some local boards have used this as a measure. While manageable at the local level, it is unclear whether ETA is capable of developing any comparable information to be used to "calibrate" this rate nationally. What, for example, is a good percentage? If local "A" is listing job vacancies as their prime work and they can state that X% of employers use their job board, is this better than local "B" who eschews this work to take on more intense work with employers in identifying more customized assessments that lead to longer retained employees or who build career pathways with that employer, but deal with fewer employers? Are they comparable? How would this be determined and how would it contribute to the national descriptor of the impact of the WIOA investment?

Increasingly limited resources from the Federal government make service decisions ever more difficult to balance between large numbers served and some sincere level of intensity of involvement.

Together these recommendations offer the combined perspectives of workforce boards across the country facing a wide variety of state and local environs. NAWB is encouraged by reforms in WIOA and appreciate ETA and ED efforts to implement the broad array of changes in the legislation. Nonetheless, there are areas where clarifying, removing, or strengthening regulations will benefit the workforce development system. Specifically, ETA/ED should review the regulations as pertaining to consultation, training and performance measures. NAWB appreciates the consideration of these comments and is available to answer any additional questions.

Sincerely,



Ronald Painter
CEO
National Association of Workforce Boards