

**To: U.S. Department of Labor
U.S. Department of Education
Relevant Federal Agencies and Contacts**

**From: National Governors Association Staff
National Association of State Workforce Agencies Staff**

Date: June 15, 2015

Re: Workforce Innovation and Opportunity Act (WIOA) Notice of Proposed Rulemaking

Staff from the National Governors Association (NGA) and the National Association of State Workforce Agencies (NASWA) are pleased to submit joint comments on the proposed rules regarding the Workforce Innovation and Opportunity Act (WIOA) Notice of Proposed Rulemaking (NPRM) RIN 1205-AB73 (Docket NO. ETA-2015-0001), implementing Title I and Title III of WIOA; and NPRM RIN 1205-AB74 (Docket No. ETA-2015-0002), “Joint Rule of Unified and Combined State Plans, Performance Accountability, and the One-Stop System Joint Provisions.”

The National Governors Association (NGA) is the bipartisan organization of the nation’s governors. Since 1908, NGA has functioned as the governors’ collective voice on national policy and a vehicle for the development of innovative solutions that improve state government and support the principles of federalism. Our members are the governors of the 55 states, territories and commonwealths.

The National Association of State Workforce Agencies (NASWA) is a private non-profit membership organization serving as the advocate for state workforce programs and policies on behalf of all 50 states, the District of Columbia, Puerto Rico and Guam. NASWA functions as a liaison to federal workforce system partners, and a forum for the exchange of information and best practices. Founded in 1937, NASWA has strengthened the workforce system through information exchange, liaison, and advocacy.

On July 22, 2014, the Workforce Innovation and Opportunity Act (WIOA) was signed into law by President Obama as Public Law 113-128. The new law was passed by both the House and the Senate on an overwhelmingly bipartisan basis. WIOA is the first legislative reform of the public workforce system in more than 15 years, since the Workforce Investment Act (WIA) of 1998. WIOA includes “core” programs such as: (1) Adult, Dislocated Worker and Youth formula Programs administered by the US Department of Labor (USDOL); (2) the Adult Education and Literacy programs administered by the Department of Education (ED); (3) Wagner-Peyser Employment Service program administered by USDOL; and (4) programs under the Rehabilitation Act that provide services to individuals with disabilities administered by the ED.

While NGA and NASWA strongly supported the enactment of WIOA, and are looking forward to working with the relevant federal departments in the implementation of WIOA, we would like to submit comments on the proposed rules around major areas of interest for which we believe further clarification or deliberation is required.

Our comments synthesize our members' concerns, as expressed by our leadership, formal committees, and through a recent survey of our respective memberships. They are underpinned by three important common themes: the need for maximum flexibility, the need for sufficient implementation time and resources, and the desire to be a true partner and voice in the implementation process.

Given the federal government's limited window for state review and analysis of the WIOA proposed regulations, these comments will serve as the basis for a conversation with the US Department of Labor (USDOL) and the Department of Education (ED) over the next several months to refine and ensure maximum flexibility for states in the final regulation.

Attached to these comments are the individual state responses to the survey mentioned above. These responses reflect many important insights and provide numerous suggestions on the proposed rules. Careful consideration of these insights will help insure WIOA is successful not only as a vision, but also as it is implemented by federal, state and local partners.

In line with these themes, it is important to recognize that each state's readiness to implement WIOA varies. The federal government should allow a flexible timeline for implementation to allow for changes in state policy and necessary improvements to state infrastructure.

For implementation to succeed, federal programs now included under the WIOA umbrella must complement each other, while eliminating duplicative requirements and inconsistent timelines. The WIOA rulemaking process should be a coordinated effort among the Departments of Labor, Education and Health and Human Services with timelines, data reporting and requirements that are aligned and streamlined. In a similar vein, across all six regions, USDOL must deliver consistent and reliable information, guidance and rulings to state and local governments.

Our comments are structured as follows:

1. Planning and Governance;
2. Unfunded Mandates;
3. Performance Accountability;
4. Service Delivery; and,
5. One-Stops.

1. PLANNING AND GOVERNANCE

A. Set-Aside

Section 682 describes how WIOA designates the percentage of funds that may be devoted to employment and training activities undertaken on a statewide basis (statewide activities). WIOA provides that up to 15 percent may be reserved from youth, adult, and dislocated worker funding streams for statewide activities, and up to an additional 25 percent of dislocated worker funds may be reserved for statewide rapid response activities. We appreciate that WIOA retained this important provision that allows governors the 15 percent set-aside provision for state-specific workforce programs, many of which are of great benefit to local areas.

Section 682.200 outlines the 11 required activities and Section 682.210 outlines the 17 allowable activities that can be completed using statewide activities funding. If funding were sufficient, these activities would help ensure continuous improvement and implementation of innovative practices in the workforce system. However, at the request of the Administration, Congress has reduced the set-aside in recent years to as low as 5 percent. The limit was raised to only 8.75 percent in Fiscal Year (FY) 2014 and 10 percent in FY 2015, the first year of WIOA implementation. While this represented a \$36 million increase versus FY 2014, it is \$130 million less than the full authorized amount. For the second year of WIOA, the Administration's FY 2016 budget continues to propose keeping the set-aside funds at 10 percent.

Section 682.220 ignores the funding reality and proposes that the set-aside funds are required to be used for evaluation of state programs under WIOA Section 116(e). Such evaluations would explore innovations surrounding integrated systems, coordinated services, career pathways, and multiple forms of engagement with businesses. Both organizations support these approaches, but without adequate funding, states will not have the ability to integrate innovations or evaluate them.

States have commented that statewide funds, now at 10 percent, are not at a level to cover the cost of the required elements let alone allowable activities. States are being asked to do more statewide activities, but the resources available are not adequate to meet federal requirements. The lack of funding hampers implementation of important WIOA strategies such as career pathways and sector and regional strategies.

- *NGA and NASWA recommend that in the absence of statewide activities funded at the full 15 percent level, the Department continue to provide waivers for some required activities.*
- *In Section 677.180 of the proposed rules, we recommend that no penalty be considered with respect to performance in any program year for which the state's statewide activities allotment is below the statutory authorization of 15 percent.*

- *As the rules are written, the WIOA statewide activities funding is the only funding impacted by failure to perform, but under-performance could be attributable to a number of areas (including Wagner-Peyser Employment Service, Adult Education, and Vocational Rehabilitation). The Departments should address how to assist partner programs to meet their performance goals.*

Section 683.135 states the governor may use the unobligated Rapid Response funds described in WIOA Section 134(a)(2)(A)(ii) that remain available after the first program year to carry out statewide employment and training activities (in addition to rapid response activities).

- *NGA and NASWA appreciate that maximum flexibility was provided in the proposed regulation for use of the unobligated state Rapid Response funds and interprets that these unobligated state Rapid Response funds will be made available for statewide activities immediately upon the beginning of the second program year.*
- *The proposed regulation is unclear with regard to how obligation of state Rapid Response funding will be handled in terms of reallocation. The regulation should be reworded to make clear that obligation of state Rapid Response funds at the end of the first program year will continue to be evaluated when making a determination of recapture and reallocation of Dislocated Worker funding.*

B. Unified and Combined Plans

For the most part, WIOA retains the governance structure and services established under WIA. One of the differences is WIOA requires states to develop and submit unified plans covering all core programs authorized under the law, instead of submitting separate plans for each program. The new law also authorizes states to submit “combined” plans that could incorporate other federal workforce programs, including programs funded through the Temporary Assistance to Needy Families (TANF) block grant, and career and technical education programs funded under the Carl D. Perkins Act. These new provisions are in line with NGA’s and NASWA’s policy positions to streamline programs and services within the publicly-funded workforce system.

The Departments proposed rules governing Unified and Combined Plans (Part 676) supports many of the goals of NGA and NASWA. We suggest the following recommendations that will support the legislative intent of WIOA:

- *In Section 676.110 of the proposed rules, it stipulates that the unified state plan shall include a description of how the state consulted with the local boards and chief elected officials in determining the planning regions. In single-area states no local boards exist. In states with a single board, a description of consultations with local boards and chief*

elected officials in determining planning regions should not be required. NGA and NASWA recommend those determinations be made entirely at the state level.

- *NGA and NASWA recommend that states whose plans are rejected should be given a detailed explanation from the Secretaries so they can focus on corrective action and not have to rewrite parts of the plan that are sufficient. The proposed rules do not require Secretaries to provide an explanation.*
- *In Section 676.130 of the proposed rules, the Vocational Rehabilitation (VR) portion of a unified plan must be approved by the Department of Education (ED) Rehabilitation Services Administration (RSA) Commissioner prior to approval by the ED and USDOL Secretaries. The Secretaries have a 90-day timeframe for approval. NGA and NASWA recommend the rules should clarify whether the 90-day timeframe starts when the unified plan is approved by the RSA Commissioner or when it is subsequently forwarded to the ED and USDOL Secretaries for approval. In addition, the proposed rules should clarify what happens to the full unified plan if the RSA Commissioner does not approve the VR portion of the state plan.*
- *NGA and NASWA recommend that in order for combined plans to be effective and efficient for all partners that opt in, the federal agencies responsible for the optional programs accept the combined plan on the timeline outlined in WIOA and not prescribe more frequent updates or different time frames for modifications and renewals. The submission deadlines must also align.*
- *NGA and NASWA request that joint planning guidelines issued by the Secretary of Labor and the Secretary of Education be issued as early as possible. Jointly issued guidance provided in a timely manner best meets the needs of the state planning processes and submission requirements for WIOA.*
- *NGA and NASWA recommend that modifications to state plans should only be necessary in the event of significant or substantial changes in labor market and economic conditions or other factors significantly affecting implementation of the plan, as is prescribed for modifications to the regional plan and local plan (proposed Section 679.580(b)). States should also have the flexibility to define what constitutes a major change. Plan modifications necessitated by minor changes are burdensome and siphon valuable resources from implementation efforts.*

C. Single Area States

WIOA provides for the selection of one-stop operators in two separate ways:

First, Section 107(g)(2) of WIOA states that a Local Workforce Development Board may be designated or certified as a one-stop operator only with the agreement of the chief elected officer in the local area and the governor.

Second, Section 122(d)(2)(A) of WIOA allows the one-stop operator to be selected through a competitive process not less than every four years.

In the proposed rules, USDOL seeks to address this inconsistency by interpreting Section 107(g)(2) of WIOA “to create an additional check for situations where a local board is selected to be the one-stop operator through the competitive process as required under WIOA Section 122(d)(2)(A) and as described in the proposed rules under Section 678.605(d). In these situations, it is appropriate to require that the chief local official to approve the selection.”

States appreciate the proposed rules addressed some of the concerns raised by Section 122(d)(2)(A) such as merit staff, the cost and burden of running a competition, situations where there are a limited number of, or only, one possible provider(s), and eligibility criteria. However, there is concern that some states and local partners will face major challenges if these Sections of WIOA are interpreted to require a competitive procurement process in every case.

- *NGA and NASWA recommend allowing an exception to requiring competitive procurement where a state is designated as a single area, or operates as a statewide planning region, or has a local area designated as “balance of state,” if the state has a history of meeting or exceeding performance in the role of operator.*
- *NGA and NASWA also recommend USDOL establish a workgroup among single area states and single statewide planning area states to enable federal and state partners to exchange information and recommendations on One-Stop roles and responsibilities in these states leading to the development of specific guidance for such states.*

D. Local Area Designation

One of the major goals of WIOA is to create more agile state and local workforce development boards that are well positioned to meet local and regional employers' workforce needs. WIOA also envisions a workforce development system that is customer-focused on both the job seeker and business, and is able to anticipate and respond to the needs of regional economies. To accomplish these goals and support service delivery strategies tailored to these needs, it is critical for the governor to have additional flexibility.

Section 679.240(a) of the proposed rules and Section 106(b)(1)(B) of WIOA requires that the governor designate local areas that “are consistent” with labor market and regional economic development areas. The proposed rules interprets this to mean that within a local area, there must be common labor markets and economic development areas as well as better integration between the workforce and economic development systems to connect the employment needs of workers with the skilled workforce needs of employers.

However, WIOA hinders the ability of the governor to accomplish these goals because the governor is required, during the first two full Program Years following enactment of WIOA, to approve a request for initial designation from any local area that was designated as a local area under WIA as long as the local area performed successfully and maintained sustained fiscal integrity for 2 years prior to the enactment of WIOA. (Section 679.250(a) of the proposed rules and Section 106(b)(2) of WIOA)

Recognizing that WIOA allows little discretion in this area, it is still important to allow governors the flexibility to apply the factors outlined in Section 679.240(a) following subsequent designation regardless of whether the area was designated previously. This will help meet the requirements of WIOA that local areas “are consistent” with labor market and regional economic development areas.

The proposed rules preclude the governor's ability to regionally align programmatic and fiscal resources to ensure the efficient and effective provision of services. Additional review considerations involving economic conditions, regional/national/global economic changes, and changes in business performance and policies should be included as criteria for ongoing review of local area designations.

- *NGA and NASWA recommend that language be added to the rules that will provide governors the maximum flexibility to apply the factors outlined in Section 679.240(a).*

In addition, 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 time frame 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.

- *NGA and NASWA further recommend that the timeline for local planning requirements be extended for a reasonable amount of time to allow state planning activities to be completed. Even with an extended timeline, local areas should demonstrate some level of collaboration/interaction with the state planning process while realizing that some of the local plan components will be dependent upon final State Plan contents.*

E. Waivers

Section 679.600 explains the waiver authority for states and locals under WIOA. Waivers are important tools that provide states with flexibility to innovate and manage programs. While WIA served as a tool for states to scale innovative workforce training programs, provisions of the law proved to be unworkable due to insufficient federal funding or burdensome federal requirements.

According to USDOL data, more than 2100 waiver requests were submitted to USDOL for flexibility under WIA. There are more than 400 active waivers currently in effect across all states, the District of Columbia and the territories.

While WIOA marks a turning point by providing permanent flexibility for several WIA provisions that are currently waived for all states, the District of Columbia and the territories, a number of waived WIA provisions will need to continue. For example, 39 states and territories currently have waivers from WIA Eligible Training Provider List (ETPL) requirements. Yet, WIOA requires governors to begin implementing new ETPL provisions by July 22, 2015.

For states that have not yet fully implemented select WIA requirements due to waivers, the implementation of additional requirements with fewer resources (compared to 1998 funding levels) and more complex systems will be difficult under the current statutory timelines.

- *NGA and NASWA recommend USDOL permit states currently operating under existing WIA waivers to keep this flexibility until: 1) the federal government provides additional time or resources, as needed, for implementation of WIOA's new requirements; or 2) states provide evidence that they are prepared to implement the additional requirements.*

F. State Workforce Development Board

Section 679.120(b) of the proposed rules 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. However, the law provides sufficient detail and flexibility for governors to determine qualified individuals to serve on the state workforce board.

- *NGA and NASWA recommend that the federal government refrain from prescribing additional definitions regarding the required expertise of state workforce members. States should be provided the flexibility to define demonstrated experience and expertise and the ability to decide their state workforce board selection process based on WIOA statute.*

As part of WIOA’s flexibility that allows a state to utilize a grandfathered state workforce board, Section 679.150 allows the governor to select an alternative entity. However, the proposed rules prescribe that the grandfathered entity must meet the requirements of Section 679.110, which establishes requirements for the makeup of the WIOA state boards. This requirement is contrary to congressional intent in Section 101(e) of WIOA and significantly diminishes flexibility provided to governors to establish an alternative entity to serve as the state board.

- *NGA and NASWA recommend that the federal government provide governors maximum flexibility to determine an alternative entity to serve as the state board based on the criteria in Section 101 of WIOA.*

G. Regional Planning

Section 679.510 of the proposed rules sets forth the requirements for regional planning. Many states are confused by the language of Section 679.510 and believe planning regions are required to negotiate and meet performance standards, in addition to the performance standards that apply to the local areas. At the same time, in accordance with the law, the language in the Preamble indicates that only coordination of local performance negotiations is required by the planning region.

- *NGA and NASWA support the language in the proposed rules appearing at Section 679.510 (a)(1)(viii) allowing establishment of local or regional standards for performance accountability measures.*

There is also some confusion among states as to whether a single local area can be split across two planning regions and whether local areas must be contiguous in order to be a planning region. The proposed rules state the Department anticipates providing additional guidance regarding the creation and management of interstate planning regions. Some states have consortia of multiple counties designated as a local area, particularly across rural sections of the state. In some cases, these areas have little in common for purposes of regional planning and in some cases are non-contiguous.

- *NGA and NASWA propose that when the state and local boards and local elected officials agree, a local area can be split between two or more planning regions.*

Section 106 of WIOA requires states to identify which of the regions are interstate areas contained within 2 or more states; however, the Sections 679.500 through 679.530 of the proposed rules repeatedly references a single governor as approving the regional plan, and determining if the plan aligns with a singular state plan. The content of the intrastate regional plan does not seem to apply to the content for an interstate regional plan, yet it is important that areas that share a labor market work together through shared LMI, shared sector partnership participation, and so forth.

- *NGA and NASWA recommend that the rules clarify that Sections 679.500 through 679.540 of the proposed rules apply only to intrastate regions, and that the interstate areas may enter into a much simpler MOU agreement in accordance with instructions developed jointly by both states' governors (or more governors, as there are tri-state and quad-state labor markets in the nation.)*

H. Maintenance of Effort

As the federal government steadily decreases investment in workforce programs, states continue to make the investments necessary to keep workforce programs in operation and meet federal maintenance of effort (MOE) requirements. MOE requirements can ultimately discourage state investments and jeopardize education and training opportunities for citizens. Consequently, our members appreciate that Congress did not enact additional mandates as part of the MOE requirements under Section 241(b) of WIOA.

Section 361.62 of the proposed rules would require the Secretary to reduce a state's Vocational Rehabilitation or Adult Education grant in any fiscal year by the amount of any prior fiscal year's MOE shortfall. This new requirement appears to go beyond the scope of congressional intent in Section 241(b) of WIOA, which states that if "the aggregate expenditures [...] for the preceding program year were less than such effort or expenditures for the second preceding program year, the Secretary [...] shall decrease the payment made under this title for such program year."

As the proposed rules note, the Department has previously required states to provide non-federal payments to the federal government if an MOE deficit was discovered after the next fiscal year's grant was awarded. The proposed change could create uncertainty for states regarding the status of future program year dollars. In addition, the lack of an appeals process could encumber federal funds while a state provides additional documentation disputing the federal government's MOE deficit determination. Yet, the change could provide states additional non-federal funds for federal matching requirements.

- *Should the federal government discover a valid MOE deficit for a previous year in which the following year's grant was awarded, NGA and NASWA recommend that states be able to: (1) provide non-federal payments; or (2) select a specific future year in which their federal Adult Education or Vocational Rehabilitation grants may be reduced.*
- *NGA and NASWA also recommend that Section 361.62 of the proposed rules be amended to hold states harmless for one year the first time that they do not reach the 90 percent MOE level, reflecting flexibility provided for other education programs in the bipartisan Every Child Achieves Act of 2015.*

2. UNFUNDED MANDATES

A. Impact on States

Implementation of the numerous provisions of WIOA is a costly and staff-intensive process. States, especially small states, are hard hit since they have limited funds and there are significant changes that need to be made. The administrative cost limitations further impact the states' ability to implement the numerous changes necessary for successful implementation of the Act.

- *NGA and NASWA believe states should be provided with additional resources, if requested, to deal with the up-front implementation costs.*

B. Integrated Data Systems

Section 677.235 of the proposed rules outlines the requirements for core WIOA Title I, III and IV programs for the collection and submission of individual records. The cost in terms of time and technology for integrating individual records across multiple data systems at the state level is very high. Multiply this effort across all the states and this is an expensive and distracting undertaking that does not substantially benefit the administration of the programs.

- *Some states believe the burden for integrated data for performance reporting across core programs rests at the federal not the state level. Many states do not have the systems in place or resources for integrated performance reporting across all six core programs. Knowing that implementing integrated systems will take significant investments in funding and time, the requirement to report in a single data file should be postponed and/or sanctions postponed for a reasonable period of time to allow federal agencies and states to establish methodologies and systems.*
- *Some states are concerned with the proposal that only Titles I, III, and IV would be subject to quarterly reporting of individual records and that Title II would be excluded. Title II is one of the six core WIOA programs, and one of the purposes of WIOA is to align the workforce investment, education, and economic development systems, that is, to promote system integration.*

C. Common Branding

Section 678.900(a) of the proposed rules designates the name “American Job Center” as the common identifier for the one-stop delivery system. In addition, Section 678.900(b) of the proposed rules require the use of “American Job Center” or the tagline “a proud partner of the American Job Center network” on all one-stop delivery system products, programs, activities, services, facilities, and related property and materials to help inform system users that the products, programs, activities, services, facilities, and related property and materials are provided by and through the publically funded delivery system.

- *Over the past several years, numerous states have invested significant resources, both time and financial, in developing their own brand for all one-stop centers, programs, and services. As such, states are reluctant to switch to another branding especially if there are no financial resources to do so. In essence, this requirement constitutes an unfunded mandate.*

D. Research/ Evaluations

Section 682.220(a)(1) of the proposed rules explain that under WIOA, states are required to use funds reserved by the governor for statewide activities to conduct evaluations of activities of the core programs. While states would like to do more data analysis and research, many states lack sufficient research capacity to carry out this requirement, and developing the capacity and then funding evaluations would be costly. The funding environment over the past twenty years, combined with recent reduced funding for statewide activities, has required states to narrow their priorities and most states are focused on service delivery and monitoring the integrity of the programs.

- *NGA and NASWA suggest that states will need dedicated funding and federal support to meet these requirements. In the absence of funding and support, the Departments should assume primary responsibility for this function, with states permitting on-site observation and, in limited circumstances, providing supplemental qualitative data. The data elements and narrative reports already required to be provided to USDOL and the other federal agencies should provide an ample source of statistical data for evaluators without burdening individual states with data requests.*
- *Annual reports are excessive, even for states with enough funding to conduct rigorous statistical evaluations, and especially when one-stop evaluations are only required every two years. There should never be an annual requirement for evaluation reports; that is the purpose of annual performance reports. Instead of preparing annual reports, states should make available to the public and to state and local boards evaluation and research reports prepared by federal evaluators with state-specific comments.*

E. Implementation Costs

The WIOA implementation costs are a de facto unfunded mandate for many states. The costs that were quantified in the proposed rules' benefit-cost analysis were new implementation costs – ongoing costs associated with WIA were not factored into the analysis. In addition, the cost estimates for many tasks are significantly below actual estimated costs. There are no additional funds allocated to sustain the ongoing implementation costs. In some states there is actually a decrease in funding to accompany the increased requirements.

The proposed rules estimates that WIOA implementation costs are only 1.1 percent to 1.2 percent of the average annual cost of implementing WIA over the last three fiscal years do not reflect the complexities of implementing WIOA. Most of the required implementation tasks are to be funded from state administrative costs. The 5 percent cap on administration is particularly harmful to smaller states trying to accomplish the same tasks as larger states without the advantages from economies of scale.

- *NGA and NASWA recommend that DOL grant state waivers from required tasks so that states can operate within the constraints of the allotted budget. We also recommend that*

DOL provide discretionary grants or preferably a supplemental funding source that would allow states to build sustainability in carrying out the required functions. In addition we recommend that DOL provide technical assistance to states to supplement the staffing and infrastructure requirements.

3. PERFORMANCE ACCOUNTABILITY

A. Participation

Under the proposed rules at Section 677.150(a), individuals who receive services via self-serve-only modes would not count as participants for performance measurement purposes. In explaining this approach, the Departments note that self-service-only individuals “have minimal interaction with the program and minimal resources are spent on their behalf.”

However, states have made critical investments in technology platforms and related tools and resources, and it is important to have accountability associated with these investments. The rules reference the low cost of self-service options, but while marginal costs may be low, average costs can be high due to the fixed costs of technology and production.

Also, technology will continue to transform service delivery, as it has in so many industries and agencies. In measuring the impact of workforce services, the quality of services and customer level of engagement are more important than the service mode (technology-enabled versus staff-assisted). Third, leaving out self-serve customers will make cross-state comparisons less meaningful, since states have chosen to provide different services through self-service modes. Finally, not counting self-serve-only customers could reduce access to staff-assisted services for customers with the largest barriers to employment, such as disadvantaged or older workers.

- *NASWA and NGA recommend that customers who receive services via self-serve only modes and are engaged jobseekers be counted as participants.*

Proposed rules at Section 677.155(c) define “exit” for the purpose of tracking and reporting the performance of participants. Some states strongly prefer implementing or already have implemented a common exit versus program exit approach to reporting performance, in order to capture the full customer experience and promote a system of shared performance accountability across the core programs. For example, one state argues that “tracking and reporting performance separately by program exit when other programs may still be providing assistance would be contrary to WIOA’s vision.” However, other states indicate implementing a common exit approach across all core programs, while desirable, would be too difficult and costly at this time. Also, one state argues “each program exists for a reason and therefore each program should have its own exit definition.”

- *NGA and NASWA recommend giving states the option to use integrated periods of participation with common dates of exit across some or all core programs. The Secretaries should provide technical assistance and resources to help all states move toward a system of shared performance accountability over an extended period of time.*

B. Statistical Model, Negotiations, and Standards

To help evaluate state performance, WIOA relies on the successful development of one or more statistical models that adjust for different economic and demographic circumstances across states. The proposed rules under Section 677.170 would apply one statistical adjustment model to the core programs. However, the performance system must address the fact states and localities have different service and co-enrollment strategies within their WIOA programs, with the result being greater or lesser proportions of customers in training.

- *NASWA and NGA recommend the statistical model include a variable to account for the types of services customers receive, so that outcomes for customers in training can be tracked and weighed separately from outcomes for customers who do not receive training services.*

States have several other important recommendations regarding the statistical model and negotiations process:

- *Statistical models should serve as a resource for negotiations and not the only means of addressing the impact of economic and demographic factors on performance. The rules should ensure that states, when negotiating preliminary and final performance standards, are able to introduce new demographic or economic information, outside the statistical model, which is relevant to performance outcomes.*
- *Regarding language in the proposed rules requiring consideration of how targets would promote continuous improvement in performance, the rules should recognize continuous improvement is evidenced not only by higher performance but also by gains in efficiency after taking into account available resources and customer demand.*
- *The Departments should conduct joint negotiations with all core partners in the states, and confirm performance standards well in advance of the deadline for states to submit the required four-year state plan and every-two-year state plan modifications.*
- *The rules should require the Departments to periodically update the statistical model(s) to help drive continuous improvement in the models.*
- *The model(s) should include variables to account for customer characteristics that are key to reducing disincentives to serving hard-to-serve groups.*

- *The margin of error of the model should be accounted for in determining whether a state has failed to achieve performance.*

There are six primary performance indicators under WIOA, which apply to each of the six core programs (except for Wagner-Peyser, which has four indicators). Under the proposed rules at Section 677.190(c), states would be assessed on twelve clustered measures: six measures that provide an overall *indicator* score (e.g., average performance across each program for the “employment in the second quarter” indicator), and six measures that provide an overall *program* score (e.g., performance across all indicators for the Title II adult education grant). Individual indicator scores for each program would also be measured.

- *NASWA and NGA support clustering measures in determining whether a state has achieved its expected level of performance. Several states indicate a preference for a weighted average rather than simple average approach to averaging performance across programs and indicators.*

Under the proposed rules, the threshold for failure for the clustered measures would be 90 percent of the state’s adjusted goal. The thresholds for failure for the individual indicator scores would be 50 percent of the adjusted goal. While the proposed rules seem reasonable, policymakers will not be able to set meaningful thresholds (or “targets”) until the statistical adjustment models are developed and tested, and states have had time to implement WIOA changes, address data access issues, and develop performance and reporting systems.

- *NGA and NASWA recommend the Departments establish and implement thresholds after two program years to develop the necessary infrastructure and information. The rules should address how the Departments will negotiate thresholds in the interim period. Once in effect, thresholds for failure should be set lower for at least two years to continue to test statistical models.*

C. Penalties

Under the proposed rules at Section 677.180 and 677.195, in the event a sanction is applied, the governor’s Reserve Allotment is reduced by “5 percent of the maximum allowable amount for the immediately succeeding program year.”

- *NASWA and NGA recommend that no penalty should be considered with respect to performance in any program year for which the state’s allotment is below the statutory authorization of 15 percent, given the current funding crisis in many states resulting from the continued low appropriations levels for these statewide activities funds.*
- *NGA and NASWA appreciates this interpretation (Section 677.195) as it ensures statewide funds are not devastated and customer service negatively impacted, that low-*

performing states have funds to focus on performance improvement, and that, as noted in the Preamble, policymakers can “foster a workforce system that is focused on achieving success, not just avoiding failure.

- *NGA and NASWA recommend sanctions be imposed only after the impact of corrective action is reflected in performance data. Thus, second year failure should be defined as failure in the first full year of performance involving participants served after the provision of technical assistance and imposition of a performance improvement plan.*
- *NGA and NASWA recommend that in the event the governor’s allotment is reduced due to a second year failure, those funds be retained for technical assistance to states that is designed to improve outcomes for customers.*

D. Indicator(s) for Employer Services

The Preamble to the proposed rules sets forth potential measures of “effectiveness in serving employers,” and notes the Departments are interested in feedback on the potential measures. State opinions on these vary. For example, one state supports measuring the repeat rate for employer use of the core programs, while another points out a state has tested this approach with “negative unintended results” deriving from a disincentive to serve small employers. Whereas one state supports customer satisfaction surveys, another notes satisfaction surveys are “subjective in nature and expensive to administer” and create a burden on employers that potentially discourages employer engagement. Several states support a low-burden approach that would involve tracking the employment and wages of jobseeker customers hired by employers who received services from the workforce system. Meanwhile, other states say more study is needed to determine an effective measure, or that states need ongoing flexibility at the state level to develop a measure that more precisely captures state priorities for employer engagement.

- *NGA and NASWA recommend the Secretaries convene and consult representatives of states, localities, employers, and other stakeholders, as required by WIOA, to develop a set of recommendations for the measure(s) of effectiveness in serving employers. Consultations, and especially those with employers, should also include discussion on potential effectiveness measures for Wagner-Peyser labor exchange services, which remain integral to helping facilitate the labor market.*
- *There is no clear consensus on a low-burden approach that also provides valuable information and the right incentives to the system at all levels. The major stakeholders should convene to develop a temporary solution and a longer-term vision. Several ideas may need to be piloted and evaluated at the state and local level before a national standard is considered.*

- *NGA and NASWA recommend the Secretaries engage the two organizations to help lead the convening of stakeholders in such discussions, including discussions with employers. Both organizations have deep connections with all workforce system stakeholders as well as the employer community (through the National Labor Exchange), and are already working with USDOL on WIOA technical assistance.*

E. Measurable Skills Gains

The states generally support a non-exit based measure that provides an interim indication of educational progress. Concerns were raised regarding the implementation of similar pre-WIOA measures under Adult Education and Family Literacy Act (AEFLA) that had perverse incentives to offering year-round programs in part due to annual reporting. Implementation of the similar USDOL WIA literacy/numeracy gains measure was viewed more positively with tracking gains in up to three different areas, but concerns were raised regarding the reporting of skills gains of participants in youth programs, for example, where skills gained in the first year were reported but skills gained in the partial second year were not. The application of the measurable skills gain measure should take into account these concerns.

Several states noted that there is a lack of clearly defined levels of attainment that demonstrate progress that can be consistently applied across the states. There also appears to be inconsistency between the language in the statute and the language in the proposed rules at Section 677.155. The statutory language indicates the population members being measured are participants who, during a program year, are in education or training programs that lead to a recognized postsecondary credential or employment, with no mention of secondary school enrollees. However Section 677.155 suggests attainment of a high school diploma or equivalent and a transcript or report card for either secondary or postsecondary education. States would like clarification on this area.

- *NGA and NASWA recommend that the rules allow a participant to achieve a gain in any deficient area, not merely the area with the lowest initial score as AEFLA has traditionally done.*
- *NGA and NASWA recommend the rules provide a minimal period before a participant is included in the measure with the specific duration of this period being unique to the education and training provided and set based on accepted industry and academic standards.*
- *While NGA and NASWA recommend more clarity on the levels of attainment that demonstrate progress as some states suggest, we recommend that the rules ensure that states have flexibility to determine appropriate skills gain measurement.*

F. Credential Attainment

As written, the proposed rules would include all exiters, even those who were not in any kind of training or education. It would also result in a strong disincentive to enroll participants in Title I programs who are only interested in career services that would not result in an industry recognized credential.

In the Preamble, the Departments specifically seek comment on clarifications that will be necessary to implement this measure.

- *NGA and NASWA recommend that the measure only apply to participants in programs intended to result in a recognized credential or specific employment. Further, participants who were in occupational training designed to lead to employment in a specific occupation and who do not achieve the credential because they have been employed in that occupation should be removed from the measure.*

G. Employment Outcome Measures

The Preamble notes that, in addition to WIOA's primary performance measures related to employment, the Departments plan to calculate WIA-type measures related to entered employment and employment retention. The Preamble states this will allow the Departments to evaluate "whether the... services were effective in helping unemployed individuals obtain employment," and whether individuals employed after exiting were still employed in later quarters.

- *NGA and NASWA recommend the Secretaries perform these calculations using data states are required to submit for the WIOA primary indicators. States should not be required to capture, report, or calculate information for additional measures.*

Proposed rules at Section 677.175 would rely on unemployment insurance wage records for WIOA reporting on employment outcomes. These data are not inclusive, however.

- *NGA and NASWA recommend the Departments issue policies that assist with removing barriers to accessing available data. Also, the Departments should provide guidance on other acceptable sources of data on employment and wages for cases not covered under the Wage Record Interchange System (WRIS).*

H. Eligible Training Provider List (ETPL)

Many states face considerable challenges implementing the eligible training provider list (ETPL) and consumer reports requirements of WIOA. It will take some states a considerable amount of time and resources to fully meet WIOA's requirements.

- *NGA and NASWA recommend careful consideration of implementation issues in determining the appropriate timeframe for full implementation of the ETPL performance accountability system. States need more time to establish procedures for new providers, and for the transition of current providers. During the additional time, the Departments should launch an intensive technical assistance effort for states, based on the effective strategies employed by a small number of states. The Departments should consider additional funding to states to develop the technology infrastructure needed to meet these requirements.*

Data access issues create barriers to implementation of the ETPL provisions in some states. These issues include WRIS (see G above), federal law protecting the privacy of student education records, and state laws restricting access to social security numbers.

- *NGA and NASWA recommend the Departments provide technical assistance and policies that assist states in removing barriers to sharing data for ETPL performance accountability purposes.*

States provide comments on formatting the reports on provider performance. One state notes that states use different technology platforms for computer and mobile outreach and “one prescribed format may not be compatible with both.” Another state reports that states prefer designing their own displays.

- *NGA and NASWA recommend maximum state flexibility in displaying provider performance data, to allow for state experimentation and to ensure compatibility with technology platforms.*

The proposed reporting requirements for training providers elicited state comments requesting the Departments minimize reporting burdens on providers. One state reports that many states already capture, as part of case management, the necessary data with respect to participants receiving training services under the Act. Another state discusses the desirability of aligning reporting requirements of WIOA with existing reporting requirements and the provider eligibility determination process. The goal is to “minimize the reporting requirements on providers to improve compliance and avoid having existing providers deciding to disconnect from the system.”

- *NGA and NASWA recommend final rules address these reporting concerns and opportunities to ensure a data capture process that best balances validity of data and efficiency of process.*

4. SERVICE DELIVERY

A. Unemployment Insurance

Under WIOA, career services provided in the one-stop centers must include, among other activities, “provision of information and *assistance regarding filing claims* for unemployment compensation.” The proposed rules at Section 678.430 require unemployment insurance assistance in the one-stop centers with either on-site staff or “by phone or via other technology, as long as assistance is provided by trained and available staff and within a reasonable time.” The Preamble portrays the proposed rules as requiring a separate customer service system for customers in the one-stop centers.

The great majority of states do not have significant unemployment insurance claims-handling staff in one-stop centers. UI federal administrative funding has supported the move toward more efficient internet and telephone filing systems. NGA and NASWA are concerned that the proposed rules at Section 678.430 conflicts with the description in the Preamble. The proposed regulation itself would permit assistance “by phone or via other technology, as long as assistance is provided by trained and available staff and within a reasonable time.” Most states have customer service availability through the telephone or internet. The requirements in the Preamble, however, exceed the apparent scope of the proposed regulation. The Preamble states that any telephone line for assistance must be “a phone line dedicated to serving one-stop customers,” and not the general customer service line. The Preamble states that individuals should receive “service beyond what they could obtain on their own using self-service tools, such as public websites and phone numbers.” The Preamble portrays the proposed regulation as requiring a separate customer service system for customers in the one-stop centers when this is not clearly stated in the proposed regulation.

States are very concerned that the proposed regulations will be interpreted to give preferential treatment to claimants who physically appear at the one-stop center over an individual contacting the agency through a home phone or computer. States are concerned that customers seeking career services other than unemployment insurance will be impacted as staff time will be devoted to assisting individuals with claims. The Preamble suggests the use of “live web chat applications, video conference applications, or similar technologies.” The options suggested would be very expensive and there is no indication of additional funding.

- *NGA and NASWA recommend that in the absence of additional funding, the regulation should be clarified to allow for UI assistance through existing customer service resources, especially those currently available by internet or telephone, within a reasonable time.*

B. Coordination of Career Services

States are concerned with Section 678.305(d), which defines “access” to programs and services as having program staff or partner program staff physically present at the one-stop or providing “direct linkage” through technology who can provide meaningful information or services. Section 678.305(d)(2) expressly states that “direct linkage” cannot include providing a phone number or website. States are concerned that they will need to have someone physically present from all programs in the comprehensive one-stop center. Providing a real-time direct connection at all times is not realistic. Providing access to a website that is used for enrollment or eligibility should qualify as a direct linkage, and we should encourage the robust use of technology in order to serve more customers.

- *NGA and NASWA recommend striking Section 678.305(d)(2) to allow access to career services by telephone, website or other technology.*

States also express concern over coordinating career services among partners, especially with the inclusion of TANF and Title II programs.

- *NGA and NASWA recommend technical assistance in providing creative approaches and best practices for delivering career services with partners.*

C. Adult Education and Family Literacy Act (AEFLA)

Many states have significant populations of adults functioning below a 9th grade level, and a shift of focus from the traditional assessment of educational gains to employment and workforce activities will need to be incorporated across all levels. There continues to be concern from some states that the new performance measures in Section 677.155 will incentivize less adult education services to 1) individuals who are not in the labor market; and 2) individuals with significant barriers to employment.

- *NGA and NASWA recommend technical assistance on implementing the new primary indicators of performance for individuals in AEFLA services.*

States are concerned about determining an appropriate and reasonable amount of one-stop infrastructure funding, as envisioned in Sections 678.715 and 679.370, coming from Title II providers. For Title II programs limited to 5 percent administrative funding, supporting one-stop infrastructure will be challenging. States also request guidance on whether infrastructure costs should come from local vendors or the state.

- *NGA and NASWA request additional clarification on the process and role of adult education programs and how they contribute to the infrastructure costs of the one-stop centers.*

D. Youth

States disagree with the definition of “in-school” youth contained in Section 681.220. The WIOA statute in Section 129(c) defines “in-school youth” as “attending school (as defined by state law)”. The proposed regulation at Section 681.220 defines “in-school youth” as “attending school (as defined by state law), *including secondary and post-secondary school.*” The word “school” as used in WIOA and traditionally viewed under WIA refers to K-12. The rules are now eliminating youth who are engaged in a post-secondary program as “out of-school,” therefore making them harder to serve under the WIOA youth program (75 percent of youth grant funds must be used for “out of school” youth). Youth in a post-secondary program may meet all of the other eligibility requirements, but would be in a position where they must drop a class or fail in order to receive the supportive youth services under WIOA.

- *NGA and NASWA recommend that states have the flexibility to determine if post-secondary students should be considered as “in-school youth.” The definition of “in-school youth” in Section 681.220 should be changed to delete “including secondary and post-secondary school.”*

5. ONE-STOPS

A. Infrastructure Funding

Section 678.410 pertaining to other entities who may serve as one-stop partners provides that “other entities that carry out a workforce development program, including federal, state, or local programs and programs in the private sector, may serve as additional partners in the one-stop system if the local boards and chief elected official(s) approve the entity’s participation.” States expressed concern that without a clear definition, just about any entity can claim to be an employment and training program.

- *NGA and NASWA recommend that states have the flexibility to define “other entities that carry out a workforce development program” and “employment and training programs.”*

Section 678.420 and 678.705 on partner roles and responsibilities describes and elaborates upon the statutory responsibilities of the one-stop partners, including all partner contributions to the costs of operating and providing services within the one-stop center system must be proportionate to the benefits received and adhere to the partner program's Federal authorizing statute, and to Federal cost principles requiring that costs are reasonable, necessary and allocable.

- *NGA and NASWA recommend additional guidance to assist the governor in establishing roles, defining equitable and efficient methods for negotiating infrastructure costs among core partners.*

B. Selection of One-Stop Operators

WIOA provides for the selection of one-stop operators in two separate ways:

First, Section 107(g)(2) of WIOA states that a Local Workforce Development Board may be designated or certified as a one-stop operator only with the agreement of the chief elected officer in the local area and the governor.

Second, Section 122(d)(2)(A) of WIOA allows the one-stop operator to be selected through a competitive process not less than every four years.

In the proposed rules, USDOL seeks to address this inconsistency by interpreting Section 107(g)(2) of WIOA “to create an additional check for situations where a local board is selected to be the one-stop operator through the competitive process as required under WIOA Section 122(d)(2)(A) and as described in the proposed rules under Section 678.605(d). In these situations, it is appropriate to require that the chief local official to approve the selection.”

States appreciate the proposed regulation addressed some of the concerns raised by Section 122(d)(2)(A) such as merit staff, the cost and burden of running a competition, situations where there are a limited number of, or only, one possible provider(s), and eligibility criteria. However, there is concern that some states and local partners will face major challenges if these Sections of WIOA are interpreted to require a competitive procurement process in every case.

- *NGA and NASWA recommends that governors, in consultation with local boards and the chief elected official of the local area, be provided the flexibility to determine whether a competition is necessary, especially if the one-stop operator has a proven history of meeting or exceeding performance, and other criteria determined by the states, local boards and chief elected officer.*