

State of California Labor and Workforce Development Agency
Employment Development Department
California Workforce Investment Board
Employment Training Panel

WIOA 2015 Comments
US Department of Labor (DOL) NPRM
RIN 1205-AB73

The comments below do not represent the California Department of Education or the local workforce areas.

CFR Citation and Page Number: 603.5(e), page 20834

Language: Expands the definition of public official to whom confidential UC information may be disclosed

Question or Concern: California requests clarification on whether states will be required to change state laws to limit disclosure of confidential UC information only to “public officials” as proposed under the NPRM

If a concern, Proposed Solution/Recommendation: A specific reference that the definition does not affect state laws relating to the permissible or mandatory disclosure of confidential UC information for other authorized purposes.

CFR Citation and Page Number: 651, page 20932

Language: Expanded definition of “farmwork”

Question or Concern: What impact will expanded farmwork definition have on the number of people eligible for services or services the Department is required to provide (fiscal and administrative burden)?

If a concern, Proposed Solution/Recommendation:

CFR Citation and Page Number: 679.260(c), page 20841

Language: Sustained fiscal integrity

Question or Concern: California seeks clarification on the three criteria that the Governor has to use to determine “sustained fiscal integrity”. The three criteria should be defined as being independent of each other. California is concerned that a narrow interpretation requiring a formal determination by the Secretary of Labor for all three criteria completely usurps the Governor’s discretion and authority to designate local areas.

If a concern, Proposed Solution/Recommendation: Clarification should be provided that only the first criterion (formal determination that either the grant recipient or the administrative entity of the area misspent funds due to willful disregard of the requirements of the provision involved) and not the latter two (gross negligence or failure to comply with accepted standards of administration), require a formal determination by the Secretary of Labor.

CFR Citation and Page Number: 680.330(a), page 20855

Preamble Page Number (if applicable): 20718

Language: How pre-apprenticeship programs and individuals enrolled or seeking to be enrolled in such programs may be best served within the One-Stop.

Question or Concern: California asks for clarification.

1. Under WIA, pre-apprenticeship programs were classified as intensive services training. With pre-apprenticeship programs moving to ITA's and therefore onto the ETPL, is it the expectation that all other intensive service providers will also be included in the ITA's and ETPL?
2. If a pre-apprenticeship program is not directly joined to an apprenticeship program do they even exist?
3. OSY can get an ITA, but can OSY under 18 or an ISY be approved for an ITA for a pre-apprenticeship program?

If a concern, Proposed Solution/Recommendation:

CFR Citation and Page Number: Subpart D – Eligible Training Providers, page 20855

Preamble Page Number (if applicable): 20719

Language: Seeking comment on:

1. Ways that the State can help streamline performance reporting for training providers and minimize the burden associated with reporting on multiple programs of study.
2. Possible adaptations of ETP eligibility and reporting requirements to ensure small CBOs, especially those serving hard to serve participant populations, have capacity to qualify as ETPs.

Question or Concern:

1. There is a concern regarding the reporting by schools (including all community colleges) of all their students (whether or not funded by WIOA) of highly confidential data. California is concerned that the cost for reporting all students

(and not just WIOA funded students) by program will result in training providers not accepting WIOA funded students to avoid the massive reporting burden.

2. CA-EDD/CWIB currently has a limited initial waiver process with a two year probation period to allow such providers onto the ETPL under WIA. California would request the same flexibility under WIOA to allow for rural areas, and those serving the hardest to serve populations the ability to qualify for the ETPL while meeting the requirements of quality training and customer choice.

If a concern, Proposed Solution/Recommendation:

1. Include only WIOA funded students in the Annual report, and aggregate the performance to ensure non-identification of students.
2. California would request the same flexibility under WIOA to allow for rural areas, and those serving the hardest to serve populations the ability to qualify for the ETPL while meeting the requirements of quality training and customer choice.

CFR Citation and Page Number: 680.450(e), page 20857

Preamble Page Number (if applicable): 20722

Language: What are the types of verifiable program-specific information this would include?

Question or Concern: California asks for clarification regarding the actual definition of what “program-specific” indicators are required by DOL.

If a concern, Proposed Solution/Recommendation: California suggests that each state be allowed the flexibility to define what those mandated indicators will be through their ETPL state policy.

CFR Citation and Page Number: 680.460(f)(1), page 20857

Preamble Page Number (if applicable): 20723

Language: Alternate factors related to performance that may be used to establish eligibility during this time.

Question or Concern:

If a concern, Proposed Solution/Recommendation:

1. Include only WIOA funded students in the Annual report, and aggregate the performance to ensure non-identification of students.
2. California would request the same flexibility under WIOA to allow for rural areas, and those serving the hardest to serve populations the ability to qualify for the ETPL while meeting the requirements of quality training and customer choice.

CFR Citation and Page Number: 680.470, page 20858

Preamble Page Number (if applicable): 20723

Language: Procedure for registered apprenticeships that seek to be included on the State's eligible training provider list

Question or Concern: The UI branch supports the inclusion of registered apprenticeship programs as eligible training providers. This change will help the UI program to streamline services for UI claimants in state and federally supported apprenticeship programs.

If a concern, Proposed Solution/Recommendation:

CFR Citation and Page Number: 680.500(d), page 20859

Preamble Page Number (if applicable): 20725

Language: Seeking comment on:

1. What are specific ways to structure the accompanying information so that it proves 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?
2. 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?

Question or Concern:

If a concern, Proposed Solution/Recommendation: California encourages a dialogue regarding "ease of use reports" that balances the needs of the average training seeker with minimizing the reporting burden on providers and the States. The summary sheet should provide basic, key, at-a-glance information, e.g., placement rate, accreditation, cost and completion rates.

CFR Citation and Page Number: 680.740, page 20861

Preamble Page Number (if applicable): 20728

Language: Alternate factors related to performance that may be used to establish eligibility during this time.

Question or Concern:

If a concern, Proposed Solution/Recommendation: California recommends that OJT's for registered apprenticeships be limited to not more than 6 months or 1,040 hours.

CFR Citation and Page Number: 680.780, page 20861

Preamble Page Number (if applicable): 20729

Language: Definition of "incumbent worker" for purposes of statewide and local employment and training activities

Question or Concern:

If a concern, Proposed Solution/Recommendation: California recommends that a worker be employed at least 6 months prior to being considered as an incumbent worker for purposes of statewide and local employment and training activities. This should help minimize potential for abuse of this provision.

CFR Citation and Page Number: 681.550, page 20868

Preamble Page Number (if applicable): 20737

Language: The Department welcomes comments on the proposed allowances of ITAs for older OSY.

Question or Concern: California requests clarification as to whether OSY with ITA's will be required to use the State approved ETPL.

If a concern, Proposed Solution/Recommendation: California agrees with ITA's for OSY.

CFR Citation and Page Number: 679.580, Page 20849

Language:

Proposed Rule

§ 679.580 When must the local plan be modified? (a) Consistent with the requirements at § 679.530, the Governor must establish procedures governing the modification of local plans. (b) At the end of the first 2-year period of the 4-year local plan, each Local Board, in partnership with the appropriate chief elected officials, must review the local plan and prepare and submit modifications to the local plan to reflect changes: (1) In labor market and economic conditions; and (2) Other factors affecting the implementation of the local plan, including but not limited to: (i) Significant changes in local economic conditions, (ii) Changes in the financing available to support WIOA title I and partner provided WIOA services; (iii) Changes to the Local Board structure; and (iv) The need to revise strategies to meet local performance goals.

Question or Concern:

Could the Department provide further clarification and examples of the types of changes to a local or regional labor market conditions that could warrant a local plan modification?

If a concern, Proposed Solution/Recommendation:

CFR Citation and Page Number: 679.560(b)(20), page 20849

Language:

...one-stop centers are implementing and transitioning to an integrated, technology-enabled intake and case management information system for programs carried out under WIOA and by one-stop partners.

Question or Concern:

Will all mandatory partners be required to use the state-wide system (e.g. Cal Jobs)?

If a concern, Proposed Solution/Recommendation:

CFR Citation and Page Number: 680.130, page 20852

Language:

... the eligibility criteria for adult and dislocated workers in the adult and dislocated worker program.

To be eligible to receive career services as a dislocated worker in the adult and dislocated worker programs, an individual must meet the definition of “dislocated worker” at WIOA sec. (3)15

Governors and Local Boards may establish policies and procedures for one-stop operators to use in determining an individual’s eligibility as a dislocated worker, consistent with the definition of WIOA sec. (3)15. These policies and procedures may address such conditions as...

Question or Concern:

(1) The process for determining eligibility as a dislocated worker through receipt of UI or exhaustion of UI is currently a cumbersome process. (2) What constitutes “unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disasters”?

If a concern, Proposed Solution/Recommendation:

Allow the One-Stop Operator/AJC or the Wagner-Peyser staff real time access to the UI database for verification of eligibility as a dislocated worker.

CFR Citation and Page Number: 680.220(a), page 20854

Language:

Yes, an individual must at a minimum receive an interview, evaluation, or assessment, and career planning, or any other method through which the one-stop operator or partner can obtain enough information to make an eligibility determination to be determined eligible for training services.

Question or Concern:

In 680.110(a) it states that “participation occurs after the registration process of collecting information to support a determination of eligibility...” Since this is the point at which time a customer becomes an eligible participant (e.g. performance begins) wouldn't it be more accurate to replace the words eligibility and eligible in 680.220(a) with determined appropriate, suitable or ability to benefit? Including “eligibility” related to training implies a secondary eligibility process whereas the focus should be on suitability for training.

If a concern, Proposed Solution/Recommendation:

CFR Citation and Page Number: 681.660, page 20869

Preamble Page Number (if applicable): WIOA H.R. 803—86, (C) Involvement of design and implementation

Language:

WIOA also calls for this population to be intimately involved in the design and implementation of services so the youth voice is represented and their needs are being met.

Question or Concern:

This language contradicts the intent of WIOA. For instance, local WIOA areas are not required to have a local youth board, but do allow for local WIOA areas to have youth councils but is not a requirement. In absence of a youth council, how is the local Workforce Development Board expected to involve this population “intimately” in the design and implementation of the program?

If a concern, Proposed Solution/Recommendation:

Clarification is requested in this area with regards to level of involvement with the youth community.

CFR citation and Page Number: 680.740, Page 20728

Language: OJT contracts with registered apprenticeship programs for training participants.

Question or Concern: California believes a specified period of time should be applicable for OJT funds.

If a concern, Proposed Solution/Recommendation: California recommends that OJTs for registered apprenticeships be limited to not more than 6 months or 1,040 hours.

CFR citation and Page Number: 680.780, Page 20861

Language: Definition of incumbent worker from WIA

Question or Concern: California seeks clarification as there is potential for abuse of this provision.

If a concern, Proposed Solution/Recommendation: California recommends that a worker be employed for at least 6 months prior to being considered an incumbent worker for purposes of statewide and local employment and training activities.

CFR Citation and Page Number: 681, Page 20863

Language:

“...increase post-secondary credential attainment”

Question or Concern:

Beyond the traditional High School Diploma or General Educational Development (GED), what other credential attainment will satisfy this requirement? Further examples of generally accepted credentialing attainment will provide for robust approaches to helping a youth meet this performance standard.

If a concern, Proposed Solution/Recommendation:

CFR Citation and Page Number: 681.210 and 681.230, page 20864

Language:

Out-of-school youth (OSY) must not attend any school, be between the ages of 16 and 24 at the time of enrollment, and meet one or more of a list of eight criteria. If the only “school” the youth attends is adult education, Youth Build, or Job Corps, the Department will consider the individual an OSY Youth for WIOA.

Question or Concern:

In §681.230, what does “school” refer to in the “not attending or attending any school”? The language above is contradictory for an OSY not attending any school. Clarification is requested.

If a concern, Proposed Solution/Recommendation:

OSY youth must not attend any school with the exception that attending adult education will be automatically categorized as not attending any school.

CFR Citation and Page Number: 681.660, page 20869

Preamble Page Number (if applicable): page 20738

Language:

This proposed §681.660 discussed the requirement in WIOA sec. 129(c)(3)(C) for the involvement of parents, participants, and community members in the design and implementation of the WIOA youth program and provides examples of the type of involvement that would be beneficial.

Question or Concern:

Both the CFR Citation and Preamble do not provide examples of the type of involvement and how this is to occur between local boards and the community.

If a concern, Proposed Solution/Recommendation:

California requests examples of the type of involvement expected such as forums, community meetings, consultants and focus groups.

CFR Citation and Page Number: 681.100; page 20863 and WIOA, page 44

Language:

Under WIA, youth councils were mandated to fulfill this function for the Board. Local Boards now may choose to fulfill the oversight responsibility, or have the discretion to delegate this function to a standing youth committee. If Local Boards choose not to delegate this function to a standing youth committee, they are responsible for conducting oversight of youth workforce investment activities under WIOA sec. 129(c).

Question or Concern:

Under WIOA, if the Local Board does not establish a standing youth committee, how does the board conduct oversight of the youth activities effectively under WIOA without the expertise of a Youth Standing Committee? Will there be recommended models that ensure Boards are high performing and comprehensive in addressing critical issues that impact our youth population?

If a concern, Proposed Solution/Recommendation:

Additional clarification is requested.

CFR Citation and Page Number: 681.290, page 20865

Language:

“a youth who is unable to compute or solve problems”

Question or Concern:

The language above needs further clarification.

If a concern, Proposed Solution/Recommendation:

Change language to “a youth who is unable to compute at an educational level or lacks life skills to solve problems.”

CFR Citation and Page Number: 681.420(h), page 20866

Language:

The objective assessment required under paragraph (a)(1) of this section or the individual service strategy required under paragraph (a)(2) of this section is not required if the program provider determines that it is appropriate to use a recent objective assessment or individual service strategy that was developed under another education or training program.

Question or Concern: What is the definition of “recent”?

If a concern, Proposed Solution/Recommendation:

CFR Citation and Page Number: 681.660, Page 20869 and WIOA, page 50

Language:

This proposed section discusses the requirement in WIOA §129(c)(3)(C) For the involvement of parents, participants, and community members in the design and implementation of the WIOA youth program and provides examples of the type of involvement that would be beneficial.

Question or Concern:

Under the current WIA, the youth council mandate included parents, participants and community member’s involvement. Under WIOA, if the local board chooses not to have a standing committee, how does the board involve parents, participants, community-based organizations (CBO), and community in the design and implementation? What types of forums or models are recommended?

If a concern, Proposed Solution/Recommendation:

Additional clarification is requested, and should include current WIA Youth Council Members and CBOs in this process.

CFR Citation and Page Number: 682.210(Q), page 20871

Language:

Developing and disseminating common intake procedures and related items, including registration processes, across core and partner programs.

Question or Concern: Will the State be developing these?

If a concern, Proposed Solution/Recommendation:

CFR Citation and Page Number: 681.260, page 20865

Language:

How does the Department define “high poverty area” for the purposes of the special rule for low-income youth in WIOA?

Question or Concern:

California requests clarification on the method proposed to identify high poverty areas.

If a concern, Proposed Solution/Recommendation:

CFR Citation and Page Number: 683.110, page 20875

Preamble Page Number (if applicable): WIOA Section 129(c)(1)(D)

Language:

However, proposed paragraph (c)(1)(ii) notes an exception to the 2-year performance period for local areas in the case of the WIOA Pay-for-Performance contracting strategies, a new option added by §129(c)(1)(D) and 134 (d)(1)(iii) of WIOA and more fully discussed in proposed subpart E.

Question or Concern:

Pay-for-Performance contracting is added under WIOA. Further clarification is need with regards to this new strategy under WIOA and its benefits to subrecipients. Additionally, how is the exception of the 2-year performance period beneficial to pass-through agencies that use Pay-for-Performance contracts for subrecipients?

If a concern, Proposed Solution/Recommendation:

Local boards would benefit from further clarification on the benefits of the pay-for-performance contracts.

CFR Citation and Page Number: 683.500, page 20886

Preamble Page Number (if applicable): WIOA Section 134(c)(3)

Language:

No more than 10 percent of the local youth allotment can be expended on the implementation of the WIOA Pay-for-Performance contract and must be spent on specific youth and adult activities.

Question or Concern:

What approaches must a Workforce Development Board utilize to evaluate what target population would benefit from such approaches in shifting funding toward these type of programs while avoiding disincentivizing services to other individuals who face multiple barriers to employment and economic success?

If a concern, Proposed Solution/Recommendation:

Clarification on approaches would help in properly using the WIOA Pay-for-Performance concept.

CFR Citation and Page Number: 687.160, page 20921

Language:

Proposed §687.160 implements §170(b)(2) of WIOA, which establishes a 45-day timeframe for issuing determinations on NDWG applications. The proposed paragraph makes it clear that final decisions on NDWG applications will be issued within 45 calendar days of receiving an application that meets the requirements.

Question or Concern:

There should be a distinction in the time frame for Regular NDWGs and Disaster NDWGs. The time frame should be shorter for Disaster NDWGs because estimating the time it takes for an applicant to conduct an assessment, gather critical data, and submit a complete application, resources would not be made available to an area impacted by a disaster until 2-3 months later, if not longer.

If a concern, Proposed Solution/Recommendation:

Establish a shorter timeframe for Disaster NDWGs.

CFR Citation and Page Number: V. Rulemaking Analyses and Notices pages 20613-20620

Language: *et.al*

Question or Concern: California requests clarification on the assumptions used to estimate the level of additional effort required for various proposed new activities, as well as data sources for the wages and loaded wage factors. The figures underestimate the number of staff and hours required to accomplish certain goals.

If a concern, Proposed Solution/Recommendation:

CFR Citation and Page Number: 679.320(b), page 20842

Preamble Page Number (if applicable): 20705

Language:

WIOA Local Board "(ii) represent businesses, including small businesses". 1,106 page NPRM: "(b) A majority of the members of the Local Board must be representatives of business in the local area. *At a minimum, two members must represent small business as defined by the U.S. Small Business Administration.*"

Question or Concern:

While it's good to have small business perspective on the Local Board, the Act does not state two; it is just plural, which the DOL often interprets to mean at least two. If a Local Board adopts the new smallest size of 19, then 10 members are from business. Two from small business would then be 20% of WIB business membership.

If a concern, Proposed Solution/Recommendation:

While WIOA requires small business on the Board, the DOL should not require Local Board to have two.

CFR Citation and Page Number: 679.370(f), page 20844

Preamble Page Number (if applicable): 20706

Language:

WIOA requires state boards to develop career pathways strategies and the local boards to develop and implement career pathways. The *law further requires that adult education must be aligned with the other core programs to develop career pathways.*

Question or Concern:

While proposed §679.370(f) reiterates the WIOA requirement that local boards lead efforts to develop career pathways with representatives of secondary and postsecondary education programs, the regulations are less clear on the role of adult education as a partner in the development and implementation of career pathways.

If a concern, Proposed Solution/Recommendation:

Provide examples of the partnership between career pathways and Title II adult education.

CFR Citation and Page Number: 680.470, page 20858

Preamble Page Number (if applicable): 20723

Language:

Under WIOA, registered apprenticeships are automatically qualified to be placed on the state eligible training provider list (ETPL). Proposed §680.470 requires the Governor to develop a process by which registered apprenticeship programs may indicate interest in getting placed on the state's ETPL. Proposed §680.330 clarifies that ITAs may be used to support both pre-apprenticeship and registered apprenticeship. Per 680.330 they may remain on the list so long as the program remains registered.

(3) INCLUSION IN LIST OF ELIGIBLE PROVIDERS.— A provider described in paragraph (2)(B) shall be included and maintained on the list of eligible providers of training services described in subsection (d) for so long as the corresponding program of the provider remains registered as described in paragraph (2)(B).

Question or Concern:

How should states monitor apprenticeship programs for compliance? What are the criteria to qualify as a registered apprenticeship program?

If a concern, Proposed Solution/Recommendation:

CFR Citation and Page Number: 680.780, 680.790, 680.800, 680.810, 680.820, pages 20861-20862

Preamble Page Number (if applicable): 20729

Language:

States and local areas must establish policies and definitions to determine which workers, or groups of workers, are eligible for incumbent worker services (WIOA sec. 134(d)(4)). To qualify as an incumbent worker, the incumbent worker needs to be employed, meet the Fair Labor Standards Act requirements for an employer-employee relationship, and have an established employment history with the employer for 6 months or more. The training must satisfy the requirements in WIOA sec. 134(d)(4) and § 680.790 and increase the competitiveness of the employee or employer. An incumbent worker does not necessarily have to meet the eligibility requirements for career and training services for adults and dislocated workers under this Act."

If a concern, Proposed Solution/Recommendation:

Under WIA, there was confusion within the workforce development community about the distinctions between "employed" and "incumbent" workers. The State Board defines the term incumbent worker since incumbent worker training is an allowable statewide activity under WIA section 134(a)(3)(A)(iv)(I). Funding for incumbent worker training must be drawn from the State's combined adult, youth, and dislocated worker "15-percent funds. These individuals do not necessarily have to meet the eligibility criteria for employed adults and dislocated workers. "Employed" adults and dislocated workers may also receive training services through the One-Stop system under WIA when certain conditions are met. These individuals must meet the statutory definition of an eligible adult or dislocated worker and, to receive intensive services, and ultimately training, an employed individual must be determined by a One-Stop operator to be in need of such services to obtain or retain employment that leads to self-sufficiency. Funding for these activities comes from the "formula" funds provided to the Workforce Investment Area.

Local/Regional Planning

CFR Citation and Page Number: 679.510, page 20846

Preamble Page Number: 20709

Language:

Preamble

Proposed § 679.510(b) requires Local Boards to make the regional plan available for comment before submitting the plan to the Governor and describes the steps necessary to ensure adequate public comment. This requirement provides all affected entities and the public an opportunity to provide input to inform plan development.

Proposed § 679.510(b)(5) specifically requires the public comment process to be consistent with the 'sunshine provisions' at WIOA sec. 107(e), which requires that the Local Boards must make the plan available through electronic means and open meetings. This requirement ensures greater transparency in the planning process, and encourages regions to consider efforts to maximize the transparency and inclusiveness of the process.

Question or Concern:

If each local area in a planning region is required to develop their own individual local plan, but not required to submit it separately, does each local plan have to undergo a separate public comment period prior to the public comment period required for regional plans? Or is it just one public comment period per submission of a plan to the Governor?

If a concern, Proposed Solution/Recommendation:

For local areas in a planning region, allow for one public comment period so long as the regional plan includes each individual local plan in its entirety.

CFR Citation and Page Number: Section 679.500 – 679.570, pages 20846 - 20849

Preamble Page Number: 20711 - 20712

Language:

Preamble

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.

Question or Concern:

WIOA includes a deadline for submission of the State Unified Plan to the Department of Labor, however does not include a deadline for submission of local/regional plans to the Governor. Which timeframe is DOL referring to?

If a concern, Proposed Solution/Recommendation:

Considering the following:

- The State Unified Plan is due March 31st 2016, and Local Plans must take into account the State Unified Plan.
- In a planning region, regional plans must incorporate the plan from each local area in that region, but a separate submission of each local plan to the Governor is not required so two separate due dates would not be necessary.
- Initial designation is for the period of July 1, 2015 – June 30th, 2017; therefore subsequent designation would take effect on July 1, 2017, and in order to be subsequently designated local areas must have engaged in regional planning.

Recommendation: Local/Regional Plans would not take effect before July 1, 2017, with a submission date to the Governor being no less than 3 months prior to allow time for adequate review and approval by the State.

CFR Citation and Page Number: 679.510, page 20846

Preamble Page Number: 20709

Language:

Preamble

While the regional plan requires coordination of local performance negotiations with the State, each CEO, as required by § 677.210(b) and (c) will negotiate performance goals with the State and will remain ultimately responsible for ensuring that the local area meets or exceeds those goals.

Proposed Rule

§ 679.510(a)(1)(viii) - The establishment of an agreement concerning how the planning region will collectively negotiate and reach agreement with the Governor on local levels of performance for, and report on, the performance accountability measures described in WIOA sec. 116(c) for local areas or the planning region.

Question or Concern:

Will the States be required to negotiate performance levels with each individual local area as well as each planning region? If so, what happens if the planning region does not meet their overall negotiated goal? Will it affect all of the local areas in the planning region? If so, how?

If a concern, Proposed Solution/Recommendation:

CFR Citation and Page Number: 679.430, page 20846

Preamble Page Number: 20708

Language:

Preamble

Local organizations often function simultaneously in a variety of roles, including local fiscal agent, Local Board staff, one-stop operator, and direct provider of career services or training services. Any organization that has been selected or otherwise designated to perform more than one of these functions must develop a written agreement with the Local Board and chief local elected official to clarify how the organization will carry out its responsibilities while demonstrating compliance with the Workforce Innovation and Opportunity Act and corresponding regulations, relevant Office of Management and Budget circulars, and the State's conflict of interest policy.

Question or Concern:

What happens if the Local Board is the entity that has been designated to serve in more than one role? Who, besides the CEO, should they develop a written agreement with?

If a concern, Proposed Solution/Recommendation:

The State Administrative Entity and/or State Workforce Investment Board should also be included in the agreement to ensure the proper firewalls are in place.

Local Board Certification

CFR Citation and Page Number: 679.310(c) and 679.310(e), Page 20842

Preamble Page Number: 20704

Language:

Preamble

Proposed § 679.310(c) asserts that the CEO may enter into an agreement with the Local Board that describes the respective roles and responsibilities of the parties. However, the CEO remains liable for funds received under Title I of WIOA unless they reach an agreement for the Governor to act as the local grant recipient and bear such liability.

Proposed § 679.310(e) affirms that in local areas with more than one unit of general local government, the CEOs of the respective units may execute an agreement to describe their responsibilities for carrying out their roles and responsibilities. If the various parties cannot come to an agreement, the Governor may appoint the Local Board.

Question or Concern:

When a local area has more than one CEO, who maintains liability for the funds? Would the responsibility be split amongst the CEOs or would that information be agreed upon in the roles and responsibilities based on a certain percentage?

Rapid Response

CFR Citation & Page Number: 682.370, Page 20745

Language: “Proposed 682.370 addresses the WIOA provision at sec. 134(a)(2)(B) that allows a State to ‘recapture’ any funds reserved for rapid response that remain unspent at the end of the PY of obligation and utilize them for State set-aside activities.”

Question/Concern: Does unspent mean unexpended or unobligated? Does rapid response include Rapid Response by Application, Rapid Response by Additional Assistance, or both? Is “statewide activities” only for 15%? It says “allows,” so it’s not required?

Waivers

CFR Citation and Page Number: 680.160, page 20853

Preamble Page Number: 20716

Language:

Preamble

A Local Board may not be the provider of career services unless it receives a waiver from the Governor and meets other statutory and regulatory conditions.

Proposed Rule

§ 680.160 The Local Board may only be a provider of career services when approved by the chief elected official and the Governor in accordance with the requirements of WIOA sec. 107(g)(2) and § 679.410.

Question or Concern:

What information would need to be included in a request for a waiver from a local board who wants to act as a one stop operator or provider of career services?

If a concern, Proposed Solution/Recommendation:

In order to provide adequate justification and ensure the local board is the best suited to serve as an operator or provider of career services; the waiver request at a minimum should address the following questions:

- Why the waiver is necessary;
- How granting the waiver would provide service to the affected area superior to that which would have been provided as the result of a competitive process;

- Why the prospective designee is the best choice as the local one-stop operator or provider of career services
- What process was used in making the determination (including the specific data that supports it)

CFR Citation and Page Number: 679.620, page 20849 - 20850
Preamble Page Number: 20713

Language:

Preamble

Finally, proposed § 679.620(d)(7) explains that if a waiver is up for renewal, the Secretary may require that States provide the most recent data available about the outcomes achieved under the existing waiver. This requirement will ensure that the Department has the most recent, relevant information before deciding whether to renew a waiver. As part of its decision the Department may take other factors into account when deciding to renew or deny a waiver.

Proposed Rule

§ 679.620(d)(7) states that the Secretary may require that States provide the most recent data available about the outcomes of the existing waiver in cases where the State seeks renewal of a previously approved waiver.

Question or Concern:

While the proposed language at § 679.620(d)(7) addresses what is required if the State wishes to renew a previously approved waiver, it doesn't specify what the most recent data is that would be required to grant a renewal of an existing waiver. Could more specifics be provided as to what sort of data is required in order to meet the requirements of §679.620(d)(7)?

CFR Citation and Page Number: 679.600 – 679.620, pages 208849 - 208850

Preamble Page Number: N/A

Language:

N/A

Question or Concern:

The proposed rules do not provide guidance on whether waivers granted under WIA, and approved to run past 2015, will apply under WIOA. Do they remain in effect?

If a concern, Proposed Solution/Recommendation:

Waivers that were granted by DOL under WIA and whose provisions are still applicable under WIOA, should remain in effect through the original period they were approved for.

Local Workforce Development Areas

CFR Citation and Page Number: 679.250(c)(1) and (2), page 20841

Preamble Page Number: 20718

Language:

Preamble

Proposed § 679.250(c), in accordance with sec. 106(b)(3) of WIOA, describes the requirements for the subsequent designation of local workforce development areas that were initially designated under § 679.250(a). Specifically, the Governor must approve requests for subsequent designation as long as the local area performed successfully, sustained fiscal integrity, and in the case of a local area in a planning region, met the planning region requirements during the 2-year period of initial designation. Local areas that are able to demonstrate successful performance and fiscal integrity must be permitted to continue to operate and may not be re-designated without the consent of the Local Board and CEO in the local area.

Proposed Rule

(c) After the period of initial designation, if the chief elected official and Local Board in a local area submits a request for subsequent designation, the Governor must approve the request if the following criteria are met for the 2 program years of initial designation:

(1) The local area performed successfully; (2) The local area sustained fiscal integrity; and (3) In the case of a local area in a planning region, the local area met the regional planning requirements described in WIOA sec.106(c) paragraph (1).

If a concern, Proposed Solution/Recommendation:

During PY 2017-2018, when determining whether a local area or local board performed successfully for the purposes of local area designation or local board recertification, will they be accountable for the WIA common measures for Program Year 2015-16 as well as WIOA's indicators of performance for Program Year 2016-17?

Adult and Dislocated Worker

CFR Citation and Page Number: 680.320(a)(4), page 20855

Preamble Page Number: 20718

Language:

Proposed Rule

§ 680.320 Under what circumstances may mechanisms other than Individual Training Accounts be used to provide training services? (4) When the Local Board determines that it would be most appropriate to contract with an institution of higher education or other eligible provider of training services will facilitate the training of multiple

individuals in in demand industry sectors or occupations, provided that the contract does not limit consumer choice.

If a concern, Proposed Solution/Recommendation:

In the past, various Appropriations Acts passed by Congress have allowed for this flexibility and provided applicable guidance. What is the Department’s definition of an “institution of higher education”?

Youth

CFR Citation and Page Number: 681.220(b)(7), page 20864

Preamble Page Number: 20733

Language:

Proposed Rule

§ 681.220 – Who is an in-school youth? - (7) An individual who requires additional assistance to enter or complete an educational program or to secure or hold employment. (WIOA secs. 3(27) and 129(a)(1)(C))

Question or Concern:

The WIOA Section 129(a)(3)(B) states a limitation that each local area may not find more than 5 percent of in-school eligible under 129 (a)(1)(C)(iv)(VII) “requires additional assistance.” The State would like clarification as to why this limitation is in place for this eligibility criterion.

If a concern, Proposed Solution/Recommendation:

CFR Citation and Page Number: Subpart C—Youth Program Design, Elements, and Parameters, page 20865

Preamble Page Number: N/A

Language:

§ 681.470: Does the Department require local programs to use WIOA funds for each of the 14 program elements?

No. The Department does not require local programs to use WIOA youth funds for each of the program elements. Local programs may leverage partner resources to provide some of the readily available program elements. However, the local area must ensure that if a program element is not funded with WIOA title I youth funds, the local program has an agreement in place with a partner organization to ensure that the program element will be offered. The Local Board must ensure that the program element is closely connected and coordinated with the WIOA youth program.

If a concern, Proposed Solution/Recommendation:

Throughout the proposed regulations in Subpart C—Youth Program Design, Elements, and Parameters the term “local program” is used without a clear definition. To avoid confusion, the Department should include a definition similar to the WIA regulations under § 664.400 or incorporate the definition of a “local program” into § 681.400

Additional Proposed Solution / Recommendation:

Possible Language: What is a local youth program?

A local youth program is defined as those youth activities offered by a Local Workforce Development Board for a designated local workforce investment area, as specified in 20 Code of Federal Regulations Part 679.

Career Services

CFR Citation & Page Number: Subpart A – Introduction, page 20715

Language:

Under WIOA, the Department proposes to classify career services into two categories: Basic and individualized career services.

CFR Citation & Page Number: 680.100, page 20715

Language:

WIOA merges the categories of core services and intensive services under WIA into the category of career services.

CFR Citation & Page Number: 687.180, page 20790

Language:

Consistent with WIOA, references to core, intensive, and training services have been changed to refer to career services. Additionally, the reference to trade-impacted workers under the NAFTA–TAA program contained in 20 CFR 671.140(c)(2) is not included in the proposed paragraph, since the NAFTA–TAA program no longer exists.

Question/Concern:

Will subgrantees need to report expenditures of Basic Career Services and Individualized Career Services, or just for Career Services as a whole?

If a concern, Proposed Solution/Recommendation:

Job Seeker Services, Employer Services, and Coordination Activities

CFR Citation & Page Number: 680.140, page 20716

Language:

In addition to the required career and training services, local areas may use these funds to provide additional job seeker services, business services, as well as facilitate

enhanced coordination between other partner programs and entities at the State and local level. Paragraphs (b)(1), (b)(2), and (b)(3) defines & describes Job Seeker Services, Employer Services, and Coordination Activities.

Question/Concern:

Will Subgrantees need to report expenditures for Job Seeker Services, Employer Services, and Coordination Activities?

If a concern, Proposed Solution/Recommendation:

Pay-for-Performance Contracts

CFR Citation & Page Number: 680.140(b)(4), page 20716

Language:

Paragraph (b)(4) authorizes local areas to enter into pay-for-performance contracts as part of a training strategy. Local areas may use up to 10 percent of their total adult and dislocated worker funds under this procurement method.

CFR Citation & Page Number: 683.520, page 20755

Language:

No more than 10 percent of the total local adult and dislocated worker allotments can be expended on the implementation of WIOA Pay-for-Performance contract strategies for adult training services described in sec. 134(c)(3) of WIOA. No more than 10 percent of the local youth allotment can be expended on the implementation of WIOA Pay-for-Performance contract strategies for youth training services and other activities described in secs. 129(c)(1) and (c)(2) of WIOA.

CFR Citation & Page Number: 683.540, page 20887

Language:

The State must: (1) Collect and report to DOL data on the performance of service providers entering into WIOA Pay-for-Performance contracts, measured against the levels of performance benchmarks specified in the contracts, pursuant to sec. 116(d)(2)(K) of WIOA and § 677.160 and in accordance with any additional guidance issued by the Secretary. (2) Collect and report to DOL State and/or local evaluations of the design and performance of the WIOA Pay-for-Performance contract strategies, and, where possible, the level of satisfaction with the strategies among employers and participants benefitting from the strategies, pursuant to sec. 116(d)(2)(K) of WIOA and § 677.160, and in accordance with any guidance issued by the Secretary. (3) Monitor local areas' use of WIOA Pay-for-Performance contract strategies to ensure compliance with the five required elements listed in § 683.500, the contract specifications in § 683.510, and State procurement policies. (4) Monitor local areas' expenditures to ensure that no more than 10 percent of a local area's adult and dislocated worker allotment and no more than 10 percent of a local area's youth

allotments are expended on WIOA Pay-for-Performance contract strategies.

Question/Concern:

Pay-for-Performance contracts are new to WIOA law. Is this something that would need to be reported under a new line item on the Summary of Expenditures Report? Or is this tracked during the procurement process?

If a concern, Proposed Solution/Recommendation:

National Dislocated Worker Grants – Allowable activities

CFR Citation & Page Number: 687.180, page 20922

Language:

NDWGs may provide for supportive services, including needs related payments (subject to the restrictions in sec. 134(d)(3) of WIOA, where applicable), to help workers who require such assistance to participate in the activities provided for in the grant. Generally, the terms of a grant must be consistent with local policies governing such financial assistance under its formula funds (including the payment levels and duration of payments).

Question/Concern:

There are two National Dislocated Worker Grants – Regular and Disaster – Will the application/Notice of Obligation give us which Grant (Regular or Disaster) will be able to have a Needs Related Payment under Supportive Services?

If a concern, Proposed Solution/Recommendation:

CFR Citation & Page Number: 653.501, page 20944 and ETA Form 790

Question/Concern: The State of California submits two recommendations regarding the ETA Form 790 referenced in 20 CFR 653.501(b) requiring the collection of additional information which will provide more complete information regarding the employer’s plan to satisfy labor objectives identified in the initial job order:

- 1. Grower Information: Add a clarifying requirement that an employer also identify and provide contact information (full address, phone number, and email address) of the grower business, if different from the employer, for each work site location where work will be performed identified in the job order. (Current ETA Form 790, Item 2)**

The current Form 790 requires information regarding *work site locations* but does not identify the specific grower or business at the identified work site. Not all employers are growers and labor contractors provide labor for a grower business which benefits from the labor services provided by workers. Identification of the grower will provide more complete information regarding the conditions and

circumstances of a worker's prospective employment at specific work sites which are not owned or operated by the employer. This additional change in the proposed regulation and Form 790 will enhance implementation of applicable laws.

- Other proposed WIOA regulations provide for complaint and investigation by the state agency regarding employment services program matters. This additional information will increase the ability of the state to promptly investigate compliance with employment service program requirements by requiring important information regarding work performed at identified work sites. The information will enhance the ability of state agencies and/or enforcement agencies to take prompt action to investigate complaints regarding participants' use of employment services under WIOA.
- Both federal and California worker protection laws recognize that joint employer relationships often arise in agricultural employments after hiring where a grower exercises significant control over wages, hours, and working conditions throughout or during the course of work in a grower's field. Such practices may give rise to modified or altered the terms and conditions of employment relative to the worker, e.g. a joint employer relationship between the employer identified in the job order and the grower business, if different from the employer. Requiring grower identifying and contact information will allow state and federal authorities to more efficiently address violations of worker protection laws by having complete information regarding work performed and promote more prompt and effective investigation of joint employer liability issues under applicable employment laws where they arise at particular work sites.

2. Recruiter Information: Add a requirement that the employer who indicates on the form that the job order will be used in connection with a future application for temporary employment certification for H-2A workers also identify the person(s) who will perform recruiting activities for the job, including independent recruiters and other persons hired by the employer, and to provide contact information (name, full address, phone number, and email address) of any foreign labor recruiters that will be used. (Current ETA Form 790, Item 26)

The current Form 790 requires information regarding referral and hiring information (Item 26). The same form is used and subsequently submitted along with a Form 9142 (foreign labor certification application) by applicants seeking to bring in foreign works under the H-2A Program. Although it is a separate process (proposed 20 CFR 653.502 and current 20 CFR 655.121(a)), the information provided on the Form 9142 must be consistent with information provided on the Form 790. The point of solicitation and recruitment of workers is a critical step in creating employment by tendering specified terms and conditions designed to solicit and inform a worker to decide to engage in specific work for compensation,

especially for out-of-state or foreign workers who sacrifice familiarity with practices and processes different from their country. It is also a point of potential misrepresentation or exploitation by unscrupulous employers or labor contractors to obtain workers under false pretenses.

- Requiring recruiter information and providing recruiter identification information will increase transparency and accountability by promoting the offer of bona fide employment opportunities for workers through a designated person who will recruit workers under the terms of the job order.
- Identification by the employer of a person, if different from the employer, who will solicit and recruit workers under the H-2A program at the time of submitting a job order will provide important and more verifiable information for both workers and the state agency's employment services program regarding the person who will be eventually securing the actual employment of the worker following foreign labor certification in accordance with the established terms specified in the job order.

More generally, the above two additions to Form 790 will improve transparency at the inception of an employer or contractor's utilization of employment services under the Workforce Innovation and Opportunity Act (WIOA), increase credibility of the information provided as constituting a bona fide opportunity for employment which workers can verify and use to make decisions regarding a job offer. The added information will also promote protection of compliant employers from those who attempt to gain a competitive advantage by failing to operate openly and lawfully carry out terms and conditions specified in the job order clearance when seeking and using agricultural workers both in California's significant agricultural industry and throughout the country.