WIOA NPRM

Joint Rulemaking on Unified and Combined Plan, Performance and Accountability, and One-Stop Delivery Centers

(Joint NPRM with the Departments of Education and Labor)

All items in the table of contents are clickable. Please click to jump to a specific section.

Contents

DEPARTMENT OF LABOR 6
FOR FURTHER INFORMATION CONTACT: 4
SUPPLEMENTARY INFORMATION: 5
I. Executive Summary 5
II. Acronyms and Abbreviations 7
IV. Section-by-Section Discussion of Proposed Regulations 14
§ 676.100 What are the purposes of the Unified and Combined State Plans? 21
§ 676.105 What are the general requirements for the Unified State Plan? 22
§ 676.110 What are the program-specific requirements in the Unified State Plan for the adult, dislocated worker and youth workforce investment activities in Workforce Innovation and Opportunity Act title I? 24
§ 676.130 What is the submission and approval process of the Unified State Plan? 26
§ 676.135 What are the requirements for modification of the Unified State Plan? 29
§ 676.140 What are the general requirements for submitting a Combined State Plan? 31
§ 676.143 What is the submission and approval process of the Combined State Plan? 34
§ 676.145 What are the requirements for modifications of the Combined State Plan? 36
B. Performance Accountability Under Title I of the Workforce Innovation and Opportunity Act (20 CFR Part 677; 34 CFR Part 361, Subpart E; 34 CFR Part 463, Subpart I) 39
§ 677.150 What definitions apply to Workforce Innovation and Opportunity Act performance measurements and reporting requirements? 42
§ 677.155 What are the primary indicators of performance under the Workforce Innovation and Opportunity Act? 47
§ 677.160 What information is required for State performance reports? 57
§ 677.165 May a State require additional indicators of performance? 63
§ 677.170 How are State adjusted levels of performance for primary indicators established? 63
§ 677.175 What responsibility do States have to use quarterly wage record information for performance accountability? 65
§ 677.180 What State actions are subject to a financial sanction under Workforce Innovation and Opportunity Act sec. 116? 67
§ 677.185 When are sanctions applied for failure to report? 67
§ 677.190 When are sanctions applied for failure to achieve adjusted levels of performance? 69
Table 1. State Program Score and State Indicator Scores 70
§ 677.195 What should States expect when a sanction is applied to the Governor's Reserve Allotment? 74
§ 677.200 What other administrative actions will be applied to States' performance requirements? 77
§ 677.205 What performance indicators apply to local areas? 78
§ 677.210 How are local performance levels established? 79
§ 677.215 Under what circumstances are local areas eligible for State Incentive Grants? 81
§ 677.220 Under what circumstances may a corrective action or sanction be applied to local areas for poor performance? 81
§ 677.225 Under what circumstances may local areas appeal a reorganization plan? 82
§ 677.230 What information is required for the eligible training provider performance reports? .. 83

§ 677.235 What are the reporting requirements for individual records for core Workforce Innovation and Opportunity Act title I, III, and IV programs? 88
§ 677.240 What are the requirements for data validation of State annual performance reports?.... 91
C. Description of the One-Stop System Under Title I of the Workforce Innovation and Opportunity Act (20 CFR Part 678; 34 CFR Part 361, Subpart F; 34 CFR Part 463, Subpart J).... 92
§ 678.300 What is the one-stop delivery system? 93
§ 678.305 What is a comprehensive one-stop center and what must be provided there? 94
§ 678.310 What is an affiliated site and what must be provided there? 97
§ 678.315 Can a stand-alone Wagner-Peyser employment service office be designated as an affiliated one-stop site? 98
§ 678.320 Are there any requirements for networks of eligible one-stop partners or specialized centers? 99
§ 678.400 Who are the required one-stop partners? 100
§ 678.405 Is Temporary Assistance for Needy Families a required one-stop partner? 101
§ 678.410 What other entities may serve as one-stop partners? 101
§ 678.415 What entity serves as the one-stop partner for a particular program in the local area? 102
§ 678.420 What are the roles and responsibilities of the required one-stop partners? 102
§ 678.425 What are the applicable career services that must be provided through the one- stop delivery system by required one-stop partners? 103
§ 678.435 What are the business services provided through the one-stop delivery system, and how are they provided? 106
§ 678.440 When may a fee be charged for the business services in 20 CFR 678.435? 107
§ 678.500 What is the Memorandum of Understanding for the one-stop delivery system and what must be included in the Memorandum of Understanding? 108
§ 678.505 Is there a single Memorandum of Understanding for the local area, or must there be separate Memoranda of Understanding between the Local Board and each partner? 109
§ 678.510 How should the Memorandum of Understanding be negotiated? 109
§ 678.600 Who may operate one-stop centers? 113
§ 678.605 How is the one-stop operator selected? 113
§ 678.610 How is sole source selection of one-stop operators accomplished? 116
§ 678.615 Can an entity serving as one-stop operator compete to be a one-stop operator under the procurement requirements of this subpart? 117
§ 678.620 What is the one-stop operator's role? 118
§ 678.625 Can a one-stop operator also be a service provider? 119
§ 678.630 Can State merit staff still work in a one-stop where the operator is not a governmental entity? 119
§ 678.635 What is the effective date of the provisions of this subpart? 120
§ 678.700 What are one-stop infrastructure costs? 121
§ 678.705 What guidance must the Governor issue regarding one-stop infrastructure funding? . 122
§ 678.710 How are infrastructure costs funded? 123
§ 678.715 How are one-stop infrastructure costs funded in the local funding mechanism? 123
§ 678.720 What funds are used to pay for infrastructure costs in the local one-stop infrastructure funding mechanism? 124
§ 678.725 What happens if consensus on infrastructure funding is not reached at the local level between the Local Board, chief elected officials, and one-stop partners? 125
§ 678.730 What is the State one-stop infrastructure funding mechanism? 126

§ 678.735 How are partner contributions determined in the State one-stop funding mechanism? 126
§ 678.740 What funds are used to pay for infrastructure costs in the State one-stop infrastructure funding mechanism? ... 129
§ 678.745 How is the allocation formula used by the Governor determined in the State one- stop funding mechanism? ... 130
§ 678.750 When and how can a one-stop partner appeal a one-stop infrastructure amount designated by the State under the State infrastructure funding mechanism? ... 130
§ 678.755 What are the required elements regarding infrastructure funding that must be included in the one-stop Memorandum of Understanding? ... 131
§ 678.760 How do one-stop partners jointly fund other shared costs under the Memorandum of Understanding? ... 131
§ 678.800 How are one-stop centers and one-stop delivery systems certified for effectiveness, physical and programmatic accessibility, and continuous improvement? ... 132
§ 678.900 What is the common identifier to be used by each one-stop delivery system? ... 135
V. Rulemaking Analyses and Notices ... 137
1. Need for Regulation ... 139
2. Alternatives in Light of the Required Publication of Proposed Regulations ... 139
3. Analysis Considerations ... 142
4. Subject-by-Subject Benefit-Cost Analysis ... 149
a. Time to Review the New Rule ... 149
b. New Elements to State and Local Plans ... 151
c. Development and Updating of State Performance Accountability Measures ... 154
d. Identification and Dissemination of Best Practices ... 157
e. Development of Strategies for Aligning Technology and Data Systems across One-stop Partner Programs to Enhance Service Delivery and Improve Efficiencies ... 157
f. Unified or Combined State Plan ... 159
g. Local Plan Revisions ... 162
h. State Performance Accountability Measures ... 163
i. Performance Reports ... 166
j. Evaluation of State Programs ... 167
5. Summary of Analysis ... 170
List of Subjects ... 205
Department of Labor ... 205
PART 676 – UNIFIED AND COMBINED STATE PLANS UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT ... 205
PART 677 – PERFORMANCE ACCOUNTABILITY UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT ... 222
Subpart A—State Indicators of Performance for Core Programs ... 222
Subpart B—Sanctions for State Performance and the Provision of Technical Assistance ... 222
Subpart C—Local Performance Accountability for Workforce Innovation and Opportunity Act Title I Programs ... 222
Subpart D—Incentives and Sanctions for Local Performance for Workforce Innovation and Opportunity Act Title I Programs ... 222
Subpart E—Eligible Training Provider Performance for Workforce Innovation and Opportunity Act Title I Programs ... 223
Subpart F—Performance Reporting Administrative Requirements ... 223

Subpart A—State Indicators of Performance for Core Programs 225
Subpart B—Sanctions for State Performance and the Provision of Technical Assistance 233
Subpart C—Local Performance Accountability for Workforce Innovation and Opportunity Act Title I Programs 238
Subpart D—Incentives and Sanctions for Local Performance for Workforce Innovation and Opportunity Act Title I Programs 240
Subpart E—Eligible Training Provider Performance for Workforce Innovation and Opportunity Act Title I Programs 243
Subpart F—Performance Reporting Administrative Requirements 245
PART 678 – DESCRIPTION OF THE ONE-STOP SYSTEM UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT 246
Subpart B—One-Stop Partners and the Responsibilities of Partners 246
Subpart C—Memorandum of Understanding for the One-Stop Delivery System 247
Subpart D—One-Stop Operators 247
Subpart E—One-Stop Operating Costs 247
Subpart F—One-Stop Certification 248
Subpart G—Common Identifier 248
Subpart A—General Description of the One-Stop Delivery System 248
Subpart B—One-Stop Partners and the Responsibilities of Partners 254
Subpart C—Memorandum of Understanding for the One-Stop Delivery System 267
Subpart D—One-Stop Operators 271
Subpart E—One-Stop Operating Costs 277
Subpart F—One-Stop Certification 291
Subpart G—Common Identifier 293
Department of Education 294
PART 361 – STATE VOCATIONAL REHABILITATION SERVICES PROGRAM 294
Subpart D – Unified and Combined State Plans Under Title I of the Workforce Innovation and Opportunity Act 294
Subpart D – Unified and Combined State Plans Under Title I of the Workforce Innovation and Opportunity Act 295
Subpart E – Performance Accountability Under Title I of the Workforce Innovation and Opportunity Act 310
Subpart E – Performance Accountability Under Title I of the Workforce Innovation and Opportunity Act 311
Subpart F – Description of the One-Stop System Under Title I of the Workforce Innovation and Opportunity Act 333
Subpart F – Description of the One-Stop System Under Title I of the Workforce Innovation and Opportunity Act 335
PART 463 – ADULT EDUCATION AND FAMILY LITERACY ACT 379
Subpart H – Unified and Combined State Plans Under Title I of the Workforce Innovation and Opportunity Act 379
Subpart I – Performance Accountability Under Title I of the Workforce Innovation and Opportunity Act 396
Subpart I – Performance Accountability Under Title I of the Workforce Innovation and Opportunity Act 396
Subpart J – Description of the One-stop System Under Title I of the Workforce Innovation and

Opportunity Act 419
Subpart J – Description of the One-stop System Under Title I of the Workforce Innovation and Opportunity Act 421
Billing Code: 4000-01-U (Education – 66%)..... 465

This document is scheduled to be published in the
Federal Register on 04/16/2015 and available online at
http://federalregister.gov/a/2015-05528, and on FDsys.gov

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 676, 677, and 678

[Docket No. ETA-2015-

0002] RIN 1205-AB74

DEPARTMENT OF EDUCATION

34 CFR Parts 361 and 463

RIN 1830-AA21

Workforce Innovation and Opportunity Act; Joint Rule for Unified and Combined State Plans, Performance Accountability, and the One-Stop System Joint Provisions; Notice of Proposed Rulemaking

AGENCIES: Office of Career, Technical, and Adult Education, Rehabilitation Services Administration, Education; Employment and Training Administration (ETA), Labor.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: The Departments of Education (ED) and Labor (DOL) are proposing, through this Notice of Proposed Rulemaking (NPRM), to implement jointly-administered activities authorized by title I of the Workforce Innovation and Opportunity Act (WIOA). Through these regulations, the Departments propose to implement job training system reforms and

strengthen the nation's workforce development system to put Americans back to work and make the United

States more competitive in the 21st Century. This joint proposed rule provides guidance for State

and local workforce development systems that increase the skill and credential attainment,

employment, retention, and earnings of participants, especially those with significant barriers to employment, thereby improving the quality of the workforce, reducing welfare dependency, and enhancing the productivity and competitiveness of the nation.

WIOA strengthened the alignment of the workforce development system's six core programs by imposing unified strategic planning requirements, common performance accountability measures, and requirements governing the one-stop delivery system. In so doing, WIOA placed heightened emphasis on coordination and collaboration at the Federal, State, and local levels to ensure a streamlined and coordinated service delivery system for job seekers, including those with disabilities, and employers. To that end, the Departments of Education and Labor propose to issue this joint NPRM to implement jointly-administered activities under title I of WIOA. These regulations lay the foundation, through coordination and collaboration at the Federal level, for implementing the vision and goals of WIOA.

In addition to this joint NPRM, the Departments have proposed separate NPRMs to implement program-specific requirements of WIOA that fall under each Department's purview. The Department of Labor is proposing a NPRM governing program-specific requirements under titles I and III of WIOA. The Department of Education is proposing three NPRMs: one implementing program-specific requirements of the Adult Education and Family Literacy Act (AEFLA), as reauthorized by title II of WIOA; and two NPRMs implementing all program-specific requirements for all programs authorized under the Rehabilitation Act of 1973, as amended by title IV of WIOA. The Department-specific NPRMs have been simultaneously published in this issue of the Federal Register. Developing and issuing all five WIOA NPRMs in a coordinated manner reinforces WIOA's heightened emphasis on collaboration to ensure an integrated and seamless service delivery system for job seekers and employers.

DATES: To be ensured consideration, comments must be submitted in writing on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number ETA-2015-0002, for Regulatory Information Number (RIN) 1205-AB74 and/or 1830-AA21, by one of the following methods:

Federal e-Rulemaking Portal: http://www.regulations.gov. Follow the Web site instructions for submitting comments.

Mail and hand delivery/courier: Written comments, disk, and CD-ROM submissions may be mailed to Adele Gagliardi, Administrator, Office of Policy Development and Research, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-5641, Washington, D.C. 20210.

Instructions: Label all submissions with "RIN 1205-AB74" and/or "RIN 1830-AA21." Please submit your comments by only one method. Please be advised that the Departments will post all comments received that are related to this NPRM on http://www.regulations.gov without making any change to the comments or redacting any information. The http://www.regulations.gov Web site is the Federal eRulemaking portal and all comments posted there are available and accessible to the public. Therefore, the Departments recommend that commenters remove personal information such as Social Security Numbers, personal addresses, telephone numbers, and e-mail addresses included in their comments as such information may become easily available to the public via the http://www.regulations.gov Web site. It is the responsibility of the commenter to safeguard personal information.

Also, please note that due to security concerns, postal mail delivery in Washington, DC

may be delayed. Therefore, the Departments encourage the public to submit comments on http://www.regulations.gov.

Docket: All comments on this proposed rule will be available on the http://www.regulations.gov Web site and can be found using RIN 1205-AB74 or RIN 1830-AA21. The Departments also will make all the comments it receives available for public inspection by appointment during normal business hours at the above addresses. If you need assistance to review the comments, the Departments will provide appropriate aids such as readers or print magnifiers. The Departments will make copies of this proposed rule available, upon request, in large print and electronic file on computer disk. To schedule an appointment to review the comments and/or obtain the proposed rule in an alternative format, contact the Office of Policy Development and Research (ETA) at (202) 693-3700 (this is not a toll-free number). You may also contact these offices at the addresses listed below.

Comments under the Paperwork Reduction Act: In addition to filing comments with ETA or the Department of Education, persons wishing to comment on the information collection aspects of this rule may send comments to: Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL-ETA, Office of Management and Budget, Room 10235, 725 17th Street, NW, Washington, D.C. 20503, Fax: 202-395-6881 (this is not a toll-free number), email: OIRA_submission@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT:

DOL: Adele Gagliardi, Administrator, Office of Policy and Research (OPDR), U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, N.W., Room N-5641, Washington, D.C. 20210, Telephone: (202) 693-3700 (voice) (this is not a toll-free number) or 1-800-326-2577 (TDD).

ED: Lekesha Campbell, U.S. Department of Education, OCTAE, 400 Maryland Avenue, S.W., Room 11-145, PCP, Washington, DC 20202-7240, Telephone: (202) 245-7808; Janet LaBreck, U.S. Department of Education, RSA, 400 Maryland Avenue, S.W., Room 5086 PCP, Washington, DC 20202-2800, Telephone: (202) 245-7408.

SUPPLEMENTARY INFORMATION:

Preamble Table of Contents

I. Executive Summary
II. Acronyms and Abbreviations
III. Background
IV. Section-by-Section Discussion of Proposed Regulations
   A. Unified and Combined State Plans Under Title I of the Workforce Innovation and Opportunity Act (20 CFR part 676; 34 CFR part 361, subpart D; 34 CFR part 463, subpart H)
   B. Performance Accountability Under Title I of the Workforce Innovation and Opportunity Act (20 CFR part 677; 34 CFR part 361, subpart E; 34 CFR part 463, subpart I)
   C. Description of the One-Stop System Under Title I of the Workforce Innovation and Opportunity Act (20 CFR part 678; 34 CFR part 361, subpart F; 34 CFR part 463, subpart J)
V. Rulemaking Analyses and Notices
   A. Executive Orders 12866 and 13563: Regulatory Planning and Review
   B. Regulatory Flexibility Act
   C. Small Business Regulatory Enforcement Fairness Act of 1996
   D. Paperwork Reduction Act
   E. Executive Order 13132 (Federalism)
   F. Unfunded Mandates Reform Act of 1995
   G. Plain Language
   H. Assessment of Federal Regulations and Policies on Families
   I. Executive Order 13175 (Indian Tribal Governments)
   J. Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Property Rights)
   K. Executive Order 12988 (Civil Justice Reform)
   L. Executive Order 13211 (Energy Supply)

I. Executive Summary

President Barack Obama signed WIOA into law on July 22, 2014. WIOA is landmark legislation designed to strengthen and improve our nation's public workforce system and help

put Americans, especially youth and those with significant barriers to employment, back to work. WIOA supports innovative strategies to keep pace with changing economic conditions and seeks to improve coordination between the core WIOA and other Federal programs that support employment services, workforce development, adult education and literacy, and vocational rehabilitation activities.

In WIOA, Congress directed the Departments of Education and Labor to issue an NPRM to implement new statutory requirements to ensure that the workforce system operates as a comprehensive, integrated, and streamlined system to provide pathways to prosperity for those it serves and continuously improve the quality and performance of its services. Therefore, the Departments of Labor and Education are issuing this joint NPRM to implement jointly-administered activities authorized under title I of WIOA, specifically those related to the Unified and Combined State Plans, performance accountability, and the one-stop system.

The Departments of Education and Labor are publishing this joint NPRM to implement those provisions of WIOA that affect all of the WIOA core programs (titles I-IV) and which will be jointly administered by both Departments. In addition to this joint NPRM, the Departments are publishing separately four agency-specific NPRMs that implement the provisions of WIOA that are administered separately by the Departments—one published by the Department of Labor implementing the agency-specific provisions of title I, and three published by the Department of Education implementing the agency-specific provisions of titles II and IV. Readers should note that there are a number of cross-references in this joint NPRM to the agency-specific NPRMs. Finally, this NPRM has been structured so that the proposed Code of Federal Regulations (CFR) parts will align with the CFR parts in the agency-specific regulations once all of the proposed rules have been finalized.

II. Acronyms and Abbreviations

AEFLA	Adult Education and Family Literacy Act
CBO	Community-based organization
CEO	Chief elected official
CFR	Code of Federal Regulations
CSBG	Community Services Block Grant
DINAP	Division of Indian and Native American Programs
DOL	U.S. Department of Labor
ED	U.S. Department of Education
E.O.	Executive Order
ESL	English-as-a-second-language
ETA	Employment and Training Administration
ETP	Eligible training provider
FEIN	Federal employer identification number
FR	Federal Register
HHS	Department of Health and Human Services
INA	Indian and Native American

INAP	Indian and Native American Programs
IPE	Individualized Plan for Employment
IT	Information technology
JTPA	Job Training Partnership Act
JVSG	Jobs for Veterans State Grants
LMI	Labor market information
MOU	Memorandum of Understanding
NACTP	Native American Career and Technical Education Program
NPRM	Notice of Proposed Rulemaking
OJT	On-the-job training
OMB	Office of Management and Budget
OPRD	Office of Policy and Research
PRA	Paperwork Reduction Act of 1995
Pub.L.	Public Law
PY	Program year
RFA	Regulatory Flexibility Act
RFI	Requests for Information

RFP	Request for Proposals
RIN	Regulatory Information Number
ROI	Requests of Information
SBA	Small Business Administration
SBREFA	Small Business Regulatory Enforcement Fairness Act of 1996
sec.	Section of a Public Law or the United States Code
SNAP	Supplemental Nutrition Assistance Program
SSA	Social Security Administration
TANF	Temporary Assistance for Needy Families
TEGL	Training and Employment Guidance Letter
UC	Unemployment compensation
UI	Unemployment insurance
U.S.C.	United States Code
VETS	Veterans' Employment and Training Service
VR	Vocational rehabilitation
WDB	Workforce Development Board
WIA	Workforce Investment Act of 1998

WIOA	Workforce Innovation and Opportunity Act
WISPR	Workforce Investment Streamlined Performance Reporting
WRIS	Wage Record Interchange System

III. Background

On July 22, 2014, President Obama signed WIOA, the first legislative reform of the public workforce system in more than 15 years, which passed Congress by a wide bipartisan majority. WIOA supersedes the Workforce Investment Act of 1998 (WIA) and amends the Wagner-Peyser Act and the Rehabilitation Act of 1973. WIOA reaffirms the role of the customer-focused one-stop delivery system, a cornerstone of the public workforce development system, and enhances and increases coordination among several key employment, education, and training programs.

WIOA presents an extraordinary opportunity for the workforce system to accelerate its transformational efforts and demonstrate its ability to improve job and career options for our citizens through an integrated, job-driven public workforce system that links diverse talent to our nation's businesses. It supports the development of strong, vibrant regional economies where businesses thrive and people want to live and work.

Most provisions in titles I-III of WIOA take effect on July 1, 2015, the first full program year after enactment; however, the new State Plans and performance accountability system take effect July 1, 2016. Title IV took effect upon enactment.

WIOA is designed to help job seekers access employment, education, training, and support services to succeed in the labor market and to match employers with the skilled workers they need to compete in the global economy. WIOA has six main purposes: (1) increasing

access to and opportunities for the employment, education, training, and support services that individuals, particularly those with barriers to employment, need to succeed in the labor market; (2) supporting the alignment of workforce investment, education, and economic development systems in support of a comprehensive, accessible, and high-quality workforce development system; (3) improving the quality and labor market relevance of workforce investment, education, and economic development efforts; (4) promoting improvement in the structure and delivery of services; (5) increasing the prosperity of workers and employers, the economic growth of communities, regions and States, and the global competitiveness of the United States; and (6) providing workforce investment activities, through workforce development systems, that increase employment, retention, and earnings of participants and that increase post-secondary credential attainment and, as a result, improve the quality of the workforce, reduce welfare dependency, increase economic self-sufficiency, meet skill requirements of employers, and enhance productivity and competitiveness of the nation.

WIOA offers an opportunity to continue to modernize the workforce system, and achieve key hallmarks of a strong workforce system: a customer-centered system, where the needs of business and workers drive workforce solutions; a system where one-stop career centers and partners provide excellent customer service to job seekers and businesses, and where the workforce system supports strong regional economies.

To achieve these goals, WIOA requires an integrated approach to the implementation, administration, service delivery, and evaluation of the services provided under the core programs at the Federal, State, and local levels. The core programs consist of: (1) the adult, dislocated worker, and youth formula programs administered by DOL under title I of WIOA; (2) the AEFLA program administered by ED under title II of WIOA; (3) the Wagner-Peyser Act

employment services program administered by DOL under title III of WIOA; and (4) the vocational rehabilitation program administered by ED under title IV of WIOA. Integration of the core programs essential to the effective operation of the workforce development system is achieved through the development of a Unified or Combined State Plan, the implementation of a common performance accountability system, and the design of the one-stop service delivery system. Under a Unified or Combined State Plan every State collaborates across the core programs (adult, dislocated worker, and youth; Wagner-Peyser; AEFLA; and Vocational Rehabilitation) and one-stop partner programs and other partners at the local and State levels to create a single unified and integrated strategic State Plan. States govern the core programs as one system assessing strategic needs and aligning them with service strategies to ensure the workforce system is designed to meet those needs. States use the certification process and competition to help achieve this vision and ensure continuous improvement.

State and Local Boards, one-stop center operators and partners must increase coordination of programs and resources to support a comprehensive system providing integrated seamless services to all job seekers and workers and effective strategies that meet businesses' workforce needs across the business life cycle. The Departments will work with State and Local Boards, one-stop center operators and partners to achieve an integrated data system for the core programs and other programs to ensure interoperability and the accurate and standardized collection of program and participant information. Integrated data systems will allow for unified and streamlined intake, case management and service delivery; minimize the duplication of data; ensure consistently defined and applied data elements; facilitate compliance with performance reporting and evaluation requirements; and provide meaningful information about core program participation to inform operations.

To facilitate the integration of the core programs, the Departments of Labor and Education have jointly developed this NPRM to implement the jointly-administered activities authorized under title I of WIOA, specifically those related to the Unified and Combined State Plan, performance accountability, and one-stop requirements. In so doing, the Departments agreed, for purposes of this NPRM, that the joint regulations would be identical across all core programs in order to ensure consistency. However, we recognize that some of the proposed regulations may not be applicable for a particular core program. For example, proposed provisions related to local areas would not be applicable to the Vocational Rehabilitation program because it operates solely at a State level.

Furthermore, various provisions of these proposed regulations reference joint guidance that the Departments plan to develop in the near future. The guidance may include: (1) procedural requirements, such as how to submit a State Plan to the Department of Labor; (2) interpretative rules; and (3) the information that will be collected by the Departments pursuant to the Paperwork Reduction Act (PRA) information collection process, which includes an opportunity for public comment.

Legal Basis

On July 22, 2014, the President signed WIOA (Pub. L. 113-128) into law. WIOA repeals WIA (29 U.S.C. 2801 et seq.). As a result, the WIA regulations no longer reflect current law, thus necessitating this NPRM for jointly-administered activities. Furthermore, sec. 503(f) of WIOA requires the Departments of Education and Labor to issue NPRMs and then final rules that implement the changes made by WIOA. To that end, the Departments of Labor and Education are issuing this joint NPRM to implement jointly-administered activities authorized under title I of WIOA. The Departments of Labor and Education will each issue separate

NPRMs, simultaneously with this joint NPRM, to implement program-specific requirements imposed by WIOA.

IV. Section-by-Section Discussion of Proposed Regulations

A. Unified and Combined State Plans Under Title I of the Workforce Innovation and Opportunity Act (20 CFR Part 676; 34 CFR Part 361, Subpart D; 34 CFR Part 463, Subpart H)

WIOA requires the Governor of each State to submit a Unified or Combined State Plan to the Secretary of DOL that outlines a 4-year strategy for the State's workforce development system. States must have approved State Plans in place to receive funding for the six core programs under WIOA – the adult, dislocated worker, and youth programs (title I of WIOA); the AEFLA program (title II of WIOA); the Wagner-Peyser Act employment services program (title III of WIOA); and the Vocational Rehabilitation program under title I of the Rehabilitation Act of 1973 (title IV of WIOA). Previously, WIA gave States the option of submitting a plan similar to the Combined State Plans (referred to as Unified Plans in WIA).

WIOA reforms State Plan requirements to foster better alignment of Federal investments in job training, to integrate service delivery across programs, and to ensure that the workforce system is job-driven and matches employers with skilled individuals. At a minimum, States must submit a Unified State Plan, which encompasses the six core programs under WIOA. States are strongly encouraged to submit a Combined State Plan, which includes the six core programs of the Unified State Plan, plus one or more optional programs, as described at § 676.140. Coordination across multiple Federal programs provides a wider range of coordinated and streamlined services to the customer.

One of WIOA's principal areas of reform is to require States to plan across the programs and include this planning process in the Unified or Combined State Plans, which promotes a shared understanding of the workforce needs of a State and a comprehensive strategy for addressing those needs. Unified or combined planning can support better alignment of resources, increased coordination among programs, and improved efficiency in service delivery.

This proposed part describes the submission process and content requirements for the Unified and Combined State Plans under WIOA. The major content areas of the Unified or Combined State Plan include strategic and operational planning elements. Strategic planning elements include State analyses of economic and workforce factors, an assessment of workforce development activities, formulation of the State's vision and goals for preparing an educated and skilled workforce that meets the needs of employers, and a strategy to achieve the vision and goals. Operational planning elements include State strategy implementation, State operating systems and policies, program-specific requirements, assurances, and additional requirements imposed by the Secretaries of Labor or Education, or other Secretaries, as appropriate.

WIOA separates the strategic and operational plan elements to facilitate cross-program strategic planning. The separation of strategic elements allows the State to develop a vision for its entire system and identify the operational elements across the programs that support the system-wide vision. The plan requirements also require the use of economic and labor market information to ensure that the Governor's vision and the State's strategies are based on a thorough understanding of the economic opportunities and workforce needs of the State. This will align the best interests of job seekers and employers with the economic future of the State.

The proposed regulations also describe the Unified or Combined State Plan modification requirements and the deadlines for the Unified or Combined State Plan, depending on which

option the State elects. Given the multi-year life of the plan, States are required to revisit regularly strategies to ensure the plan remains responsive to economic conditions and labor market needs.

State Workforce Development Boards are responsible for the development, implementation, and modification of the plan, and for convening of all relevant programs, required partners, and stakeholders. The Governor must ensure that the Unified or Combined State Plan is developed in a transparent manner and in consultation with representatives of Local Boards and chief elected officials (CEOs), businesses, representatives of labor organizations, community-based organizations (CBOs), adult and youth education and workforce development providers, institutions of higher education, disability service entities, youth-serving programs, and other stakeholders with an interest in the services provided by the six core programs and any optional program included in a Combined Plan, as well as the general public, including individuals with disabilities.

As part of the PRA process for information collections, the Unified or Combined State Plan information collection instrument and submission requirements will be published in the Federal Register pending completion of Office of Management and Budget (OMB) review. Additionally, DOL and ED will issue joint planning guidance to assist States in implementing the planning requirements for both the Unified and Combined State Plans. Additional guidance related to Combined State Plans may also be jointly issued in partnership with other Secretaries as necessary to clarify requirements for optional programs. Currently, the Departments issue State planning guidance separately to explain the Administration's priorities in relation to the planning requirements, explaining such requirements where necessary, submission procedures,

and other matters. Jointly issued guidance would best meet the needs of State planning processes and submission requirements for WIOA.

The Departments note that titles I, II, and the Rehabilitation Act of 1973 as amended by title IV of WIOA appear to raise inconsistencies regarding the applicability of certain jointly-administered requirements as they relate to the outlying areas—American Samoa, Guam, the U.S. Virgin Islands, and the Northern Mariana Islands. The apparent inconsistencies are grounded in the fact that WIOA and the Rehabilitation Act contain two differing definitions of "State." Specifically, sec. 3(56) of WIOA defines "State," for purposes of programs funded under title I of WIOA, as the 50 States, the District of Columbia, and Puerto Rico; the outlying areas are defined separately in sec. 3(45) as described above, and include Palau in certain circumstances. On the other hand, title IV, which amended the Rehabilitation Act of 1973, defines "State" at sec. 7(34) as the 50 States, the District of Columbia, Puerto Rico, American Samoa, Guam, the U.S. Virgin Islands, and the Northern Mariana Islands, thereby defining any of the outlying areas as a State for purposes of programs funded under title IV of WIOA. Title II of WIOA does not separately define either "State" or "outlying area," but defines "eligible agency" at sec. 203(3) to mean "the sole entity or agency in a State or outlying area responsible for administering or supervising policy for adult education and literacy activities in the State or outlying area. . ." These differences in definitions raise potential inconsistencies in the applicability of certain jointly-administered requirements for purposes of the outlying areas, such as those related to the requirements in secs. 102 and 103 of WIOA, which require States to submit a Unified or Combined State Plan to receive funding. Given the differing definitions, WIOA appears to be inconsistent across the core programs as to whether an outlying area must submit a Unified or Combined State Plan to receive funding.

WIOA sec. 102(a) requires that, in order for a State to be eligible to receive allotments for the core programs, the State must submit a Unified State Plan. Read in isolation, sec. 102(a) does not appear to require that outlying areas submit a Unified State Plan as a prerequisite to receiving funds for the core programs.

However, several other provisions in title I of WIOA create uncertainty on this point. Sections 126 (youth formula program) and 131 (adult and dislocated worker formula programs) require States to meet the requirements of secs. 102 or 103 to receive a formula allotment under title I, while those same sections require outlying areas to comply with the requirements of title I, without elaboration, to receive an allotment under title I. The requirement in WIOA secs. 126 and 131 that outlying areas must comply with the requirements of title I implies—but is not clear—that they must submit a Unified State Plan. Between the clear language in sec. 102 and the failure of secs. 126 and 131 to reference secs. 102 and 103, WIOA title I is unclear if outlying areas are required to submit a Unified State Plan to receive funding under title I.

Under title II of WIOA, which reauthorizes AEFLA, sec. 211(b)(1) states that eligible agencies shall be awarded a grant to carry out their adult education program if they have a Unified State Plan approved under sec. 102. Section 211(c)(1) includes similar language with regard to sec. 102 of WIOA when it describes the amounts to be allotted to eligible agencies. As noted above, WIOA sec. 203 defines an eligible agency as the agency in the State or outlying area (as those terms are defined in sec. 3 of WIOA) responsible for administering the adult education program in the State or outlying area. Thus, a plain reading of secs. 211(b)(1) and 211(c)(1) is that both States and outlying areas must have an approved Unified State Plan to be eligible to receive title II funds. WIOA sec. 221(1) reinforces this reading by requiring each

eligible agency to develop, implement, and monitor the relevant portions of the Unified State Plan.

However, WIOA sec. 224 only requires each State that wants funds under title II for any fiscal year to submit a Unified State Plan in accordance with sec. 102. In other words, sec. 224 does not mention eligible agencies or outlying areas, as is done in other provisions throughout title II. Of additional note is that separate from the requirements of WIOA, the Department of Education has permitted outlying areas administering AEFLA-funded programs to include AEFLA in an application for Consolidated Grants to Insular Areas (Consolidated Grant), in accordance with 48 U.S.C. 1469a. Consolidated Grant applications are submitted in lieu of any other State plan that is required under the programs included in the consolidation. Finally, sec. 101(a)(1) of the Rehabilitation Act of 1973, as amended by title IV of WIOA, requires a State—the definition of which includes outlying areas as described above—to submit a Unified State Plan in accordance with sec. 102 of WIOA in order to be eligible to receive Vocational Rehabilitation Services funds. This provision, unlike the similar provisions in WIOA titles I and II discussed above, is clear that the submission of a Unified State Plan is a prerequisite to receiving funding.

Given these differences and potential inconsistencies, there are two possible options with regard to outlying areas. The first option is to require the outlying areas to submit a Unified or Combined State Plan as a prerequisite to receiving funding for the core programs. Under this option, the outlying areas would receive their funding through the relevant statutory and regulatory processes for all core programs as would be applicable to any State. While this option is consistent with WIOA's goal of creating a more integrated, streamlined system and treats all grantees similarly, the Departments understand that the Unified or Combined State Plan

requirements could pose additional burden on the outlying areas that may not exist for other States in terms of size, capacity, and resources. If the Departments were to adopt this option, the Department of Education would have, as an additional consideration, the implications of the Consolidated Grant application process as an option for the outlying areas to apply for AEFLA funds.

The second option would be not to require the outlying areas to submit a complete Unified or Combined State Plan as a prerequisite to receiving funding for the core programs. Under this option, the Departments would continue to award funds to the outlying areas under WIOA as they have in the past. For example, under this option the Department of Labor would continue to require the outlying areas to submit a plan as part of the competitive grant competition required by WIOA sec. 127(b)(1)(B). On the other hand, the Department of Education would require the outlying areas to submit a Unified or Combined State Plan, in accordance with secs. 102 and 103 of WIOA, for both the AEFLA and Vocational Rehabilitation Services programs. Under this option, outlying areas administering AEFLA would also still have the option to submit a Consolidated Grant to Insular Areas in lieu of the Unified or Combined State Plan under WIOA. While this option may be consistent with current practice for each program and most in line with the plain meaning of each of the relevant programmatic requirements under WIOA, it may not as effectively promote the collaborative, integrated purposes of WIOA among the core programs. In addition, this option imposes differing requirements for the core programs administered by the outlying areas, thereby causing potential confusion during the implementation process. Moreover, this option could result in the Vocational Rehabilitation Services program being the only component on a Unified or Combined State Plan, which would render the Unified or Combined State Plan requirements meaningless.

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

In the section-by-section discussions of each proposed Unified and Combined State Plan provision below, the heading references the proposed DOL CFR part and section number. However, the Department of Education proposes in this joint NPRM identical provisions at 34 CFR part 361, subpart D (under its State Vocational Rehabilitation Services Program regulations) and at 34 CFR part 463, subpart H (under a new CFR part for AEFLA regulations). For purposes of brevity, the section-by-section discussions for each Department's provisions appear only once—in conjunction with the DOL section number—and constitute the Departments' collective explanation and rationale for each proposed provision.

§ 676.100 What are the purposes of the Unified and Combined State Plans?

Proposed § 676.100 describes the principal purposes of the Unified and Combined State Plans, which communicate the State's vision for the State workforce system and serve as a vehicle for aligning and integrating the State workforce system across Federal programs.

Proposed § 676.100(a) explains that the Unified or Combined State Plan serves as the vehicle for the State to outline its vision of the workforce development system and how the State will achieve WIOA's goals.

Proposed § 676.100(b) explains that the Unified or Combined State Plan serves as a 4-year plan for how the State will align and integrate the workforce development system.

Proposed § 676.100(b)(1)-(4) explain how the strategies articulated in the Plan support the State's vision and overarching goals. The goals of the 4-year Unified and Combined State Plans are to align and integrate Federal education, employment, and training programs; guide investments to ensure that training and services are meeting the needs of employers and job

seekers; apply consistent job-driven training strategies across all relevant Federal programs; and engage economic, education, and workforce partners in improving the workforce development system.

§ 676.105 What are the general requirements for the Unified State Plan?

Proposed § 676.105 describes the general requirements for the Unified State Plan that apply to all six core programs. These requirements set the foundation for WIOA implementation by fostering strategic alignment, improving service integration, and ensuring that the workforce system is industry-relevant, responds to the economic needs of the State, and matches employers with skilled workers. The Departments envision a plan that describes how the State will develop and implement a unified, integrated program rather than a plan that separately discusses the State's approach to operating each program individually.

Proposed § 676.105(a) explains that Unified State Plans must be submitted in accordance with § 676.130 and that the Secretaries of Labor and Education will issue joint planning guidance, as discussed above, with instructions to States on how to submit Unified State Plans.

Proposed § 676.105(b) implements WIOA's statutory requirements in sec. 102(a), and requires that the State submit the Unified State Plan to the Secretary of Labor to receive funding for the workforce development system's six core programs.

Proposed § 676.105(c) requires, in accordance with sec. 102(a) of WIOA, that the State outline its 4-year strategy for WIOA's core programs and meet the requirements of WIOA sec. 102(b). This section further explains that the Secretaries of Labor and Education will jointly issue planning guidance, which will include additional requirements with which the State's plan must comply.

Proposed § 676.105(d), which implements sec. 102(b) of WIOA, describes the content required to be included in the Unified State Plan. The proposed regulation includes major structural elements rather than repeating all the statutory State planning requirements. States still must comply with each of the statutory requirements, regardless of whether they are repeated in regulation.

Proposed §§ 676.105(d)(1)-(3) implement the key WIOA statutory requirements found in sec. 102(b)(1), (b)(1)(E), and (b)(2), respectively. The plan contains two major content areas -- strategic elements and operational planning elements. Strategic planning elements include State analyses of economic and workforce factors, an assessment of workforce development activities, formulation of the State's vision and goals for preparing an educated and skilled workforce that meets the needs of employers, and a strategy to achieve the vision and goals. Operational planning elements include State strategy implementation, State operating systems and policies, program-specific requirements, assurances, and other requirements imposed by the Secretaries of Labor or Education. Additional explanations and clarifications of assurances and plan requirements will be contained in the subsequently issued joint planning guidance. The plan requirements also emphasize the use of economic and labor market information to ensure that the Governor's vision and State strategies are based on a thorough understanding of the economic opportunities and workforce needs of the State, to align the best interests of job seekers and employers with the economic future of the State.

Finally, proposed § 676.105(d)(3)(v), as allowed by WIOA sec. 102(b)(2)(C)(viii), requires the State Plan to include any additional operational planning elements as the Secretaries determine are necessary. These additional elements will be included in the joint planning guidance.

§ 676.110 What are the program-specific requirements in the Unified State Plan for the adult, dislocated worker and youth workforce investment activities in Workforce Innovation and Opportunity Act title I?

§ 676.115 What are the program-specific requirements in the Unified State Plan for the Adult Education and Family Literacy Act program in Workforce Innovation and Opportunity Act title II?

§ 676.120 What are the program-specific requirements in the Unified State Plan for the Wagner-Peyser Act Employment Services programs as amended by title III of the Workforce Innovation and Opportunity Act?

§ 676.125 What are the program-specific requirements in the Unified State Plan for the State Vocational Rehabilitation Program in title IV of WIOA?

States are required to develop a unified or combined plan as described in § 676.105. While States must address general common planning requirements, States must also ensure that their planning process and plan content adhere to the legal requirements for each of the six core programs that remains unique to each program, as required by sec. 102(b)(2)(D) of WIOA.

Proposed § 676.110, implementing WIOA sec. 102(b)(2)(d)(i), describes the additional requirements to which the adult, dislocated worker, and youth programs are subject.

Proposed § 676.115 explains the additional requirements to which the AEFLA program is subject.

Proposed paragraph (a) contains three specific program requirements. First, subparagraph (1) restates the statutory requirement that the eligible agency must align its adult education content standards with its State-adopted challenging academic content standards under the Elementary and Secondary Education Act of 1965, as amended, and further establishes that

the eligible agency must have completed that alignment by July 1, 2016. Establishing the July 1, 2016, date will ensure that all States are positioned to work toward full implementation of rigorous standards in the first year of the Unified State Plan and promote consistency across States. Second, subparagraph (2) addresses the general requirement that States, in the Unified State Plan, describe the methods and factors the State will use to distribute funds under the core programs. The regulation clarifies and reinforces requirements in title II that the eligible agency must compete title II funds, award multi-year grants, and provide direct and equitable access to funds using the same grant or contract announcement and application procedure. Adding the provisions found in sec. 231 of WIOA to this subparagraph is intended to clarify the requirements related to the distribution of AEFLA funds that must be incorporated into the Unified State Plan. Third, subparagraph (3) addresses the requirement that the State describe how it will integrate workforce and education data on core programs, unemployment programs and education through post-secondary education. The regulation requires that for title II, a State must include in the Unified State Plan how it will ensure interoperability of data systems in the reporting of core indicators and performance reports required to be submitted by the State. This regulation is intended to support the work of eligible agencies participating in State Longitudinal Data Systems initiatives and Workforce Data Quality initiatives and otherwise support the concepts of interoperability that will allow efficient reporting of performance under WIOA.

Proposed § 676.120, consistent with sec. 102(b)(2)(D)(iv), requires States to include any information the Secretary of Labor determines is necessary to administer the Employment Services Program. This additional information will be provided in the jointly issued planning guidance.

Proposed § 676.125 explains the additional requirements to which the State Vocational Rehabilitation program is subject. Specifically, States must submit a Vocational Rehabilitation Services portion, which complies with all State plan requirements set forth in sec. 101(a) of the Rehabilitation Act of 1973, as amended by WIOA, as part of the Unified State Plan. The Commissioner of the Rehabilitation Services Administration of ED is responsible for approving the Vocational Rehabilitation Services portion of the Unified State Plan.

In addition to the specific elements required by WIOA, the Unified State Plans must include any additional program specific aspects as required by sec. 102(b)(2)(C)(viii).

§ 676.130 What is the submission and approval process of the Unified State Plan?

In order to facilitate the State strategic planning process, and concurrent review by the relevant Federal program offices, the Unified State Plan must be submitted to the Secretary of Labor, according to the procedures established in this section, and as clarified and explained through joint planning guidance. Proposed § 676.130(d), discussed below, outlines the procedures the Secretary of Labor will follow upon receipt of a Unified State Plan. Proposed § 676.130 also describes the requirements for transparency, public comment, and submission, as well as the terms for approval.

Proposed § 676.130(a) requires that the Unified State Plan be submitted in accordance with the procedures set out in the joint planning guidance, as previously discussed, issued by the Secretaries of Labor and Education and the procedures outlined in sec. 102(c) of WIOA.

Proposed §§ 676.130(b)(1) and (2) reiterate the requirement at sec. 102(c)(1) of WIOA regarding the deadlines for submitting the initial and subsequent Unified State Plans to the Secretary of Labor. The Secretary will develop a process for submission of Unified State Plans to ensure that ED receives the entire Unified State Plan submission concurrently. Based on this

timeline, States are required to submit their first Unified State Plan on March 3, 2016. The Departments anticipate that the second Unified State Plans will need to be submitted 4 years after the first plan, in roughly the spring of 2020. The official submission dates for the Plans will be announced in the joint planning guidance.

Proposed paragraph (b)(3) clarifies that, consistent with current practice for many of the core programs, a PY runs from July 1 through June 30 of any year. This clarification is particularly important, in this context, for the Vocational Rehabilitation program since that program operates on a Federal fiscal year and will continue to do so, in accordance with title I of the Rehabilitation Act of 1973, despite the fact that the Vocational Rehabilitation Services portion of the Unified State Plan will align, for submission purposes, with the other partners on a PY basis.

Proposed § 676.130(c) requires that the State ensure that the Unified State Plan is developed and drafted as part of a transparent process.

Proposed § 676.130(c)(1) implements WIOA's Sunshine Provision at sec. 101(g), which the Departments have interpreted to require that the State provide an opportunity for comment by the general public and by representatives of Local Boards, CEOs, businesses, representatives of labor organizations, CBOs, adult education providers, institutions of higher education, and other stakeholders with an interest in the services provided by the six core programs, including individuals with disabilities. This opportunity for comment provides interested stakeholders with a means to participate actively and effectively in the development of the plan in a transparent manner.

Proposed § 676.130(c)(2) reiterates WIOA's Sunshine Provision's requirement at WIOA sec. 101(g) that the State Board make information regarding Unified State Planning publicly

available to the public through regularly occurring open meetings. In addition, this section requires that the Unified State Plan describe the State's process and public comment period.

Proposed § 676.130(d) implements WIOA sec. 102(c)(2)(A) which requires the Secretary of Labor to provide the entire Unified State Plan to the Secretary of Education for review pursuant to the submission process described in § 676.130(b). Because content pertaining to each of the six core programs will be integrated throughout the Unified State Plan, it will be more efficient and effective to provide both Secretaries the opportunity to review the entirety of a State's plan rather than trying to break out the portions of the plan pertaining to the specific programs. This joint review process supports the purposes of the Unified State Plan in fostering program integration and alignment.

Proposed §§ 676.130(e)-(g), implementing WIOA sec. 102(c)(2)(B), pertain to the approval of the Unified State Plan.

Proposed § 676.130(e) implements WIOA's statutory requirement that the Unified State Plan is subject to the approval of the Secretary of Labor and the Secretary of Education. WIOA requires both Secretaries to approve the Unified State Plan to ensure cross-program alignment, integration, and collaboration between the programs administered by the two Departments.

Proposed § 676.130(f) implements WIOA's statutory requirement that the Commissioner of the Rehabilitation Services Administration approve the vocational rehabilitation services portion of the Unified State Plan before the Secretaries of Labor and Education approve the Unified State Plan.

Proposed § 676.130(g) implements WIOA's statutory requirement that the Unified State Plan must be reviewed and approved by the Secretaries of Labor and Education within 90 days of receipt. The Secretary of Labor will develop a process for submission of Unified State Plans

to ensure that the Secretary of Education receives the entire Unified State Plan submission concurrently. The section further states that in order to disapprove a Unified State Plan either the Secretary of Labor or the Secretary of Education must find, in writing, that the Plan is inconsistent with a core program requirement, is inconsistent with Unified State Plan requirements under WIOA sec. 102, is incomplete, or that the plan does not provide sufficient information to make the findings described in proposed §§ 676.130(g)(1)-(2).

Proposed § 676.130(h) implements WIOA sec. 102(c)(2)(B), which provides that if one of the Secretaries does not affirmatively make the determination described in §§ 676.130(g)(1)-(3) within 90 days of receipt, the Unified State Plan will be considered approved.

§ 676.135 What are the requirements for modification of the Unified State Plan?

Given the multi-year life of the Unified State Plan, States must revisit regularly State Plan strategies and recalibrate these strategies to respond to the changing economic conditions and workforce needs of the State. At a minimum, a State is required to submit modifications to its Unified State Plan at the end of the first 2-year period of any 4-year plan and also under specific circumstances, examples of which have been included in this section. States may also choose to submit a State Plan modification at any time during the life of the plan. Proposed § 676.135 further describes the requirements for submission and approval of Unified State Plan modifications, which are subject to the same public review and comment requirements and approval process as the full Unified State Plan submissions.

Proposed § 676.135(a) reiterates WIOA's statutory authority in sec. 102(c)(3)(B), which allows the Governor to submit a modification of the Unified State Plan at any time during the 4-year period of the Unified State Plan.

Proposed § 676.135(b)(1) implements the statutory requirement in WIOA sec. 102(c)(3)(A), requiring the Governor to submit a Unified State Plan modification at the end of the first 2-year period of any 4-year State Plan.

In addition to the statutory mandate to modify the Plan, proposed §§ 676.135(b)(2)-(3) require that the Governor modify the Unified State Plan when changes in Federal or State law or policy substantially affect the strategies, goals, and priorities upon which the Unified State Plan is based or when there are substantial changes in the State's workforce investment system. In order for the plan to both effectively govern the State's implementation and operation of the core programs and effectively serve the State's workforce and employers, the plan must be consistent with relevant laws and policies.

Proposed § 676.135(c) requires that modifications to the Unified State Plan be subject to the same public review and comment requirements for submitting a Unified State Plan described at proposed § 676.130(c). This requirement ensures transparency in the process of developing the Unified State Plan modification. The Unified State Plan modification must describe the State's process and timeline for ensuring public comment.

Proposed § 676.135(d), implementing WIOA sec. 102(c)(3)(B), requires Unified State Plan modifications to be subject to the same approval process as the original Unified State Plan submission. Modifications must be approved by both the Secretary of Labor and the Secretary of Education within 90 days of receipt, in accordance with the standards described at § 676.130, which also includes the approval process for the Vocational Rehabilitation Services portion of the State plan.

§ 676.140 What are the general requirements for submitting a Combined State Plan?

States have the option to submit a Combined State Plan that goes beyond the core programs of a Unified State Plan to include at least one optional, additional Federal workforce, educational, or social service program from the programs identified in sec. 103(a)(2) of WIOA. Generally, the requirements for a Combined State Plan include the requirements for the Unified State Plan as well as the program-specific requirements for any optional programs that are included in the Combined State Plan. To expand the benefits of cross-program strategic planning, increase alignment among State programs, and improve service integration, States are strongly encouraged to submit Combined State Plans.

Proposed § 676.140, which implements sec. 103(a) and (b) of WIOA, authorizes the submission of a Combined State Plan, lists the optional programs that a State may include, and describes the requirements of the combined plan.

Proposed § 676.140(a) allows a State to submit a Combined State Plan in lieu of a Unified State Plan. Proposed § 676.140(b), implementing WIOA sec. 103(b)(2), clarifies that, if a State submits a Combined State Plan that is approved, the State is not required to submit any other plan in order to receive the funds to operate the programs covered by the combined plan. The Combined State Plan takes the place of the individual State Plans for the optional programs that are covered by the plan and replaces the Unified State Plan. In this way, the Combined State Plan is meant to reduce the burden for States and promote integrated planning across State programs. One proposed exception to this rule, for the optional program, employment and training activities carried out under the Community Services Block Grant (CSBG) Act (42 U.S.C. 9901 et seq.), is described below under proposed § 676.140(h).

The 4-year cycle, with a 2-year modification, for the Combined State Plan is inconsistent with the planning cycles for the plans governing the optional programs. The Departments seek comment on how to address this issue and reduce the burden of managing multiple cycles. Specifically, the Departments request comment on how to treat the plan for an optional program whose planning cycle is longer than 2 years, whose planning cycle is less than 2 years, and whose planning process includes intra-cycle modifications of the plan. Similarly, the Departments request comments on how best to treat the plan for an optional program that is reauthorized or otherwise significantly amended during the 4-year or 2-year cycle of a Combined State Plan, including a change to the optional program's planning cycle.

Proposed § 676.140(c) requires that the Combined State Plan be submitted to the appropriate Secretary for approval in accordance with the procedures described in proposed § 676.143(a).

Proposed § 676.140(d) reiterates the requirement that the Combined State Plan include all of the core programs, and at least one of the optional programs described in WIOA sec. 103(a)(2).

Proposed §§ 676.140(d)(1)-(11) identify the programs that a State may include in the Combined State Plan. These are Federal programs that offer educational, training, employment, or supportive services to populations that may overlap with those core programs serve. By expanding the State's cross-program planning beyond the core programs to include one or more of the optional programs the State will further improve strategic alignment and service integration for job seekers and employers.

Proposed §§ 676.140(e)(1)-(4) generally describe what must be included in the Combined State Plan. It is important to note that the portions of the Combined State Plan covering the core

programs must include all of the required contents of the Unified State Plan, while the portions of the Combined State Plan covering optional programs must include the information for a plan or application as required by the laws authorizing and governing the optional programs, as well as common planning requirements (both strategic and operational) described in sec. 102(b) of WIOA, and as clarified and explained in the joint planning guidance for all included optional programs. This provision implements sec. 103(b)(1) of WIOA.

Proposed § 676.140(f) clarifies that although the optional programs listed in sec. 103(a)(2) of WIOA are included in the Combined State Plan, those programs are subject to the requirements of the applicable Federal law, regulations, and program-specific requirements governing those programs. A program's inclusion in the Combined State Plan does not negate a State's duty to comply with all of the relevant laws and regulations, procedures, and any other requirements imposed by the agency or organization administering or governing that program.

Proposed § 676.140(g), consistent with sec. 103(d)(2) of WIOA, explains that the term "appropriate secretary" when used in relation to the optional programs refers to the head of the Federal agency overseeing the program.

Proposed § 676.140(h) indicates that States that elect to include employment and training activities carried out under the CSBG Act (42 U.S.C. 9901 et seq.) under a Combined State Plan would submit all other required elements of a complete CSBG State Plan directly to the Federal agency that administers the program, according to the requirements of Federal law and regulations. Because employment and training activities are only a subset of the broad range of anti-poverty activities and other requirements addressed in the overall CSBG plan, States would not be required to include these program-specific elements of a complete CSBG State Plan in the WIOA Combined State Plan.

§ 676.143 What is the submission and approval process of the Combined State Plan?

In order to facilitate the State's strategic planning process, and concurrent review by the relevant Federal program offices, the Combined State Plan must be submitted in accordance with jointly-issued planning guidelines issued by the Secretaries of Labor and Education and any program-specific requirements of each optional program that a State includes.

Proposed § 676.143 implements WIOA's statutory requirements for submitting a Combined State Plan. These are similar to the requirements for submitting a Unified State Plan, with added considerations for review and approval by the Federal agencies that oversee the optional Combined State Plan programs.

Proposed § 676.143(a) requires the Combined State Plan to be submitted in accordance with the requirements in § 676.143 and joint planning guidelines issued by the Secretaries of DOL and ED.

Proposed § 676.143(b) requires the State to submit, to all Secretaries whose programs are included in the Combined State Plan, in accordance with the procedures described in the joint planning guidance described in § 676.143(a), any plan documents, application, form, or similar documents that are required by the optional Combined State Plan programs or activities in order to receive Federal funding for that program. Though the Combined State Plan takes the place of the individual State Plans for the optional programs or activities included in the Combined State Plan, the State must still comply with the submission requirements for approval of Federal funding under the optional programs.

Proposed § 676.143(c) requires that the Combined State Plan be approved or disapproved in accordance with the requirements of sec. 103(c) of WIOA. This section requires that only the Secretary tasked with administering the relevant optional program review and approve that

portion of the Combined State Plan. Accordingly, proposed § 676.143(c)(1) implements sec. 103(c)(3)(A) of WIOA, describing the approval process by the Secretaries of Labor and Education for those parts of the Combined State Plan that cover the core programs, while proposed § 676.143(c)(2) implements sec. 103(c)(3)(B) of WIOA, describing the approval process by the appropriate secretary for the optional programs included in the Combined State Plan.

Proposed § 676.143(d) implements WIOA's standards for the Secretaries of Labor, Education, or other appropriate secretary to determine if a Combined State Plan should be approved or disapproved, or otherwise deemed complete. These standards are similar to the standards for disapproving a Unified State Plan, with considerations for the requirements of the optional Combined State Plan programs and activities. Proposed §§ 676.143(d)(1)-(3) state that the plan may not be approved if the relevant Secretary determines, in writing, within the relevant review period that: the plan is inconsistent with the requirements of the core programs or one or more of the optional programs included; does not meet the criteria for the core programs or one or more of the optional programs included; or is considered incomplete or insufficient to make an approval determination.

Under this section, the appropriate Secretary reviewing his or her portion of the Combined State Plan is not required to take any action or make any determination to approve/disapprove a plan beyond what is required or permitted under the law governing that program. For example, if the appropriate Secretary is only authorized to determine if a plan is complete, as part of the Combined State Plan approval process that Secretary would not also be required to make the additional determinations described in § 676.143(d) in order to approve or disapprove that portion of the plan.

Proposed § 676.143(e) implements the requirement in WIOA sec. 103(c)(3) that, unless the relevant Secretary makes the determination described in § 676.143(d), the relevant portion of the plan will be deemed approved.

Proposed § 676.143(f) requires a State, with respect to the core programs, and a program under the Carl D. Perkins Career and Technical Education Act of 2006, to reach an agreement with the appropriate Secretaries regarding State performance measures or State performance accountability measures, as the case may be, including levels of performance. The plan may not be approved if an agreement as to these measures is not reached and included in the plan. Performance requirements for the Carl D. Perkins Career and Technical Education Act of 2006 continue to apply.

§ 676.145 What are the requirements for modifications of the Combined State Plan?

Section 103 of WIOA provides for the modification process for parts of the Combined State Plan. Proposed § 676.145 applies to the Combined State Plans the same requirements for modifications as Unified State Plans, with added requirements for the additional Federal programs included in the Combined State Plan. For the additional program and activities that are not part of the Unified State Plan, the State may elect to modify the Combined State Plan according to WIOA sec. 102(c)(3).

Proposed § 676.145(a) requires modification of the Combined State Plan for the core programs at the end of the first 2-year period of any 4-year Combined State Plan. This proposed regulation subjects the core programs in the Combined State Plan to the modification requirements described at § 676.135 for Unified State Plans, ensuring that all State plans governing the core programs are treated equally. Additionally, this proposed regulation requires the State Workforce Development Board to review the Combined State Plan, and the Governor

to submit a modification to the Combined State Plans to ensure that the Plan remains responsive to changes in labor market and economic conditions and to other factors that impact the strategies described in the Combined State Plan.

Proposed § 676.145(b), similar to the Unified State Plan provision, allows States to modify a Combined State Plan, at any time during the 4-year period of the Plan and requires modifications as described in § 676.145(a).

Proposed § 676.145(c)(1) allows the State, at its discretion, to apply the modification requirements in § 676.135 to the optional programs and activities included in the Combined State Plan.

Proposed § 676.145(c)(2) requires the State to submit, in accordance with the submission requirements described in § 676.143, any modification, amendment, or revision required by Federal law for the optional programs included in the Combined State Plan. However, the State is required to submit the modification, amendment, or revision for approval only to the Secretary overseeing the program if the modification, amendment, or revision affects the administration of that particular program and has no impact on the Combined State Plan as a whole or the integration and administration of the core and optional programs at the State level. In this case, the State may submit its modification, amendment, or revision in accordance with the procedures and requirements applicable to the particular program.

In addition, if the program-specific requirements change by law for an optional Combined State Plan program, the State may choose to either: (1) modify the Combined State Plan or (2) remove the program from the Combined State Plan and submit a separate plan to the Federal agency that oversees that program, in accordance with the new Federal law authorizing the optional program and other applicable legal requirements for such program. Since Combined

State Plan programs are optionally included by the State in a Plan, the State may also choose to exclude them at a later date. A State also may amend its Combined State Plan to add an optional program or activity described in § 676.140(d), provided that it meets the requirements of WIOA and the optional program or activity.

Proposed § 676.145(d) requires the modifications of Combined State Plans to be subject to public review and comment as described in proposed § 676.130(c) or in program-specific requirements of each optional program included by the State. The Combined State Plan modification process must comply with the transparency requirements for the six core programs in the Combined State Plan. The Departments seek comment on how to streamline the public review and comment process for Combined State Plan modifications; whether it is advisable to limit the comment process to significant or substantial modifications to the common planning elements; and, if so, how the Departments might define significant or substantial changes.

Proposed § 676.145(e) requires that modifications of the portions of the Combined State Plan that pertain to the core programs must be approved by the Secretaries of Labor and Education according to the approval standards described in § 676.143.

Proposed § 676.145(f) requires that modifications of the Combined State Plan for the programs or activities described in § 676.140(d) be approved by the appropriate Secretary if the modification, amendment, or revision affects the administration of only that particular optional program and has no impact on the Combined State Plan as a whole or the integration and administration of the core and optional programs at the State level.

B. Performance Accountability Under Title I of the Workforce Innovation and Opportunity Act (20 CFR Part 677; 34 CFR Part 361, Subpart E; 34 CFR Part 463, Subpart I)

1. Introduction

Section 116 of the Workforce Innovation and Opportunity Act (WIOA) establishes performance accountability indicators and performance reporting requirements to assess the effectiveness of States and local areas in achieving positive outcomes for individuals served by the core programs. The core programs are defined in sec. 116(b)(3)(A)(ii) of WIOA to include the adult, dislocated worker, and youth programs under title I of WIOA, the AEFLA programs under title II; the Employment Services authorized by the Wagner-Peyser program under the Wagner-Peyser Act as amended by title III ("Employment Services"); and the Vocational Rehabilitation program under the Rehabilitation Act of 1973, as amended by title IV.

With a few exceptions, including the local accountability system under sec. 116(c) of WIOA, the performance accountability requirements apply across all of the core programs. It is instructive to note that sec. 116 is located in the statute under subtitle A, which is System Alignment. This is an historic opportunity to align definitions, streamline performance indicators, and integrate reporting for each of the core programs to the extent practicable, while implementing program-specific requirements. Through these proposed joint regulations, the Departments are laying the foundation for the establishment of a performance accountability system that serves all core programs and their targeted populations in a manner that is customer-focused and that supports an integrated service design and delivery model. In addition, WIOA requires additional programs, including Job Corps, Native American programs, the Migrant and Seasonal Farmworker programs, and the YouthBuild program, to use the same performance

accountability indicators as the core programs, as provided in 29 CFR part 686 and 29 CFR part 684. This will better align both the core programs and other education and training programs across the workforce system. Further, DOL plans to include other workforce programs under its purview in this streamlining effort, including the Jobs for Veterans State Grants (JVSG) program as authorized by the Jobs for Veterans Act, other formula and applicable competitive grant programs administered by DOL.

As with the planning requirements discussed previously, the differing definitions of "State" raise potential inconsistencies as to the applicability of the performance accountability system requirements of sec. 116 of WIOA for purposes of the outlying areas and their administration of the core programs. Section 116, which consistently references States, establishes a common performance system to measure the effectiveness of the States and local areas in achieving positive outcomes for participants in the core programs. However, sec. 116 does not specifically reference the outlying areas. Sections 126 and 131 of WIOA require that outlying areas comply with all of the requirements of title I as a prerequisite to their receipt of title I funds, although neither section specifically references the requirements of sec. 116. The silence in sec. 116 is especially important with regard to the core programs funded under title I of WIOA, and administered by the Department of Labor, since sec. 3 defines the terms "State" and "outlying area" separately. Reading title I, and sec. 116 specifically, in isolation, suggests that the performance system does not apply to the outlying areas.

Unlike the title I programs, the Adult Education and Vocational Rehabilitation programs under titles II and IV, respectively, clearly require the outlying areas to comply with the performance accountability system requirements of sec. 116 of WIOA. Section 212 applies the performance provisions in sec. 116 to all of the programs and activities authorized in title II,

which includes the adult education programs and activities administered by the eligible agencies in the outlying areas. Additionally, sec. 106 of the Rehabilitation Act, as amended by title IV of WIOA, requires that States—which includes the outlying areas—comply with the performance accountability system requirements of sec. 116 of WIOA.

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

The first option would be to subject the title I WIOA core programs administered by the outlying areas to the sec. 116 performance system, as WIOA requires of the core programs funded under titles II and IV. The second option would be not to apply the performance accountability system requirements of sec. 116 of the title I WIOA programs administered by the outlying areas, since title I is less clear in the applicability of these requirements to the outlying areas, while requiring the outlying areas administering the Adult Education and Vocational Rehabilitation Services programs, funded under titles II and IV respectively, to comply with the sec. 116 requirements since these titles clearly require such compliance. This option, while perhaps most in line with the plain meaning of the relevant statutory provisions, is contrary to the purpose of WIOA generally and the performance accountability system established in sec. 116 specifically. Moreover, this option would treat the various core programs differently, thereby

causing potential confusion during implementation and could result in disparate treatment with regard to sanctions.

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

In the section-by-section discussions of each proposed performance accountability provision below, the heading references the proposed DOL CFR part and section number. However, the Department of Education proposes in this joint NPRM identical provisions at 34 CFR part 361, subpart E (under its State Vocational Rehabilitation Services Program regulations) and at 34 CFR part 463, subpart I (under a new CFR part for AEFLA regulations). For purposes of brevity, the section-by-section discussions for each Department's provisions appear only once—in conjunction with the DOL section number—and constitute the Departments' collective explanation and rationale for each proposed provision.

§ 677.150 What definitions apply to Workforce Innovation and Opportunity Act performance measurements and reporting requirements?

Proposed § 677.150 defines key performance-related terms which States must use in their reporting on performance calculations. The Departments propose these definitions to facilitate consistent reporting across the States. Under WIA, States created differing definitions of key terms for performance reporting, which resulted in inconsistent reporting and prevented the Departments from fully evaluating the effectiveness of its workforce and educational programs.

The definitions the Departments are proposing in these regulations are sufficiently broad to apply across core programs and other programs authorized by this statute, to create an integrated performance accountability system, and to support clarity and alignment of performance metrics and comparability among the programs and States.

Proposed § 677.150 defines participant, reportable individual, and exit.

Proposed § 677.150(a) proposes a definition of "participant" across the core programs because participants are specifically identified in the statute as included in performance calculations. The definition of participant establishes a common point of measurement at which an individual is meaningfully engaged in a core program. This measurement point takes into consideration the unique purposes and characteristics of each program and the ways in which an individual may access, and ultimately engage in, services in each of the core programs. The proposed definition does not attempt to define the activities leading up to participation in the same way across all of the core programs, but instead seeks to establish a common point in service design and delivery that an individual reaches regardless of the program in which he or she is enrolled. In each program, an individual must meet a specific programmatic threshold at which he or she begins receiving services regardless of the program. The proposed definition takes into account the unique processes of each program to meet such thresholds and, thus, participant is defined in a manner that works across the core programs. The proposal defines participant as a reportable individual who has received staff-assisted services after satisfying all applicable programmatic requirements for the provision of services, such as the eligibility determination. This proposed definition establishes a common approach to establishing a minimum participation threshold that is appropriate to the services provided by each program. This approach also ensures consistent definition of participant within each program. This definition excludes self-service individuals because they have minimal interaction with the program and minimal resources are spent on their behalf. Such individuals are reportable, as defined below, because they have contact with the system but are not participants and, thus, are not included in performance calculations.

Specifically for Wagner-Peyser Employment Services, only those reportable individuals who received staff-assisted services would be included in performance calculations. For WIOA adults, reportable individuals who receive staff assisted services would be considered participants and, thus, be included in performance calculations. For WIOA dislocated workers, reportable individuals who are determined eligible and receive a staff-assisted service would be considered participants and, thus, be included in performance calculations. For WIOA youth, reportable individuals who are determined eligible, receive an assessment, and receive a program element (a staff-assisted service) would be considered participants and, thus, be included in performance calculations. For the AEFLA program, reportable individuals who have been determined eligible and who have completed at least 12 contact hours in an adult education and literacy activity under AEFLA would be considered participants and, thus, be included in performance calculations. For the Vocational Rehabilitation program, reportable individuals who have been determined eligible for services and who have an approved and signed Individualized Plan for Employment (IPE) that outlines the services that the individual will receive would be considered participants and, thus, be included in performance calculations.

Proposed § 677.150(b) defines "reportable individual" as an individual who meets specific core program criteria for reporting such as the provision of identifying information or a level of service receipt that is below the staff-assisted level, which will be further explained in guidance issued by DOL and ED. This approach would allow for counting self-service system utilization or those who received only informational services/activities as well as other services that may occur prior to an individual meeting all of the established benchmarks for participation.

These definitions are critical for determining who is subject to performance calculations. All individuals receiving staff-assisted services through WIOA workforce system core programs

would be reported under a single count of program participants and would be subject to performance calculations. It is important to note that this differs from ETA's current approach for the Employment Services' under WIA reporting whereby self-service individuals are included in performance calculations. In contrast, under these proposed regulations all self-service and information-only individuals would be subjected to reportable counts and other associated information, but not performance calculations for the primary indicators of performance. This proposed approach also would address the current inconsistency in reporting based on various co-enrollment strategies.

The Departments are seeking feedback regarding this proposed approach, specifically for the WIOA title I and III programs, on the appropriate point of receipt of staff-assisted services, which has not been a commonly defined point under WIA. A stronger delineation of that measurement point, which would be the same for the Wagner-Peyser Employment Services, WIOA adults, and WIOA dislocated workers, would enhance comparability across States.

Proposed § 677.150(c) defines the term "exit" for the purposes of a uniform performance accountability system for the core programs under WIOA, as well as applicable non-core programs as established through regulation or guidance. Several of the primary indicators of performance for performance accountability require measuring participants' progress after they have exited from the program. One consistent definition of exit would facilitate this calculation and will allow the Departments to make meaningful comparisons across the States. For the core programs, excluding Vocational Rehabilitation, the Departments propose defining "exit" as the last date of service. The last date of service means the individual has not received any services for 90 days and there are no future services planned. For the purpose of this definition, "service" does not include self-service, information-only activities, or follow-up services. Therefore, in

order to determine whether or not an individual has exited, States will retroactively determine if 90 days have passed with no further service and no further services scheduled.

The proposed definition of "exit" for the Vocational Rehabilitation program is similar in that it marks the point at which the individual no longer is engaged with the program and there is no ongoing relationship between the individual and the program. However, the proposed definition takes into account specific programmatic requirements. Under the Vocational Rehabilitation program, an individual would be determined to have exited the program on the date the individual's case is closed in accordance with Vocational Rehabilitation program requirements. Even with this programmatic distinction, the calculations would be essentially the same as with the other core programs because in all instances the "exit" count would capture all individuals who are no longer active participants in any of the core programs. In addition, the Departments exclude from the definition of "exit," for purposes of the Vocational Rehabilitation program, those individuals who have achieved a supported employment outcome at a subminimum wage. This proposed provision is necessary to implement WIOA's heightened emphasis on competitive integrated employment.

The Departments considered various approaches to defining "exit" across the programs. The proposed definition introduces common language that is broad enough to apply to all of the core programs, but also accommodates statutory requirements specific to the Vocational Rehabilitation program as implemented in 34 CFR 361.43 and 361.56.

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

WIOA sec. 116(d)(2)(I) requires States to report on the number of participants who are enrolled in more than one WIOA core program. Therefore, the Departments are also considering the value of a cross-program definition of exit, sometimes called a common exit, that is based upon the last staff-assisted service from all core programs rather than a program exit. The current proposed definition of "exit" is program specific so if an individual was receiving services from more than one program, that individual could have multiple "exits." The current proposed definition would allow programs to capture all exit-based participant outcomes in a reporting period regardless of whether the participant continued to receive services from other core programs. The Departments have considered a common exit-based definition that requires an individual to have completed all programs in order to officially exit from the system. Such a definition would emphasize the importance of an individual receiving and completing all partner program services necessary to ensure a successful attachment to the labor market. It is, however, largely dependent on the ability of States to exchange data effectively and efficiently across State agencies in order to determine outcomes for each of the programs. The Departments are seeking comments on the costs and benefits of taking a program-exit approach or a common exit approach in defining "exit."

2. Subpart A—State Indicators of Performance for Core Programs

§ 677.155 What are the primary indicators of performance under the Workforce Innovation and Opportunity Act?

Proposed § 677.155 identifies the primary indicators of performance that States must include in their Unified or Combined State Plans. The primary indicators are applied in numerous places across all of the WIOA proposed regulations. Though the indicators may appear under other components of the regulations the indicators are aligned and the same and do

not vary across the regulations. The Departments have considered a variety of approaches to define the primary indicators of performance, which will be applied to each of the core programs outlined in sec. 116(b)(3)(A)(ii) of WIOA. Specifically, these indicators will apply to the core programs administered by ED's Office of Career, Technical, and Adult Education, ED's Rehabilitation Services Administration, and DOL's ETA. WIOA presents new opportunities for system alignment through performance accountability. The ED and DOL envision a performance system whereby all programs' primary performance metrics share a common language that supports comparability and facilitates enhanced consumer choice and better programmatic decision-making.

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

Proposed § 677.155(a)(1)(i) implements the first statutory performance indicator in sec. 116(b)(2)(A)(i)(I) of WIOA and requires States to report on the percentage of participants in unsubsidized employment in the second quarter after exit from the program. This statutory language requires States to measure the employment rate of participants in the second quarter after exit from the program. In contrast, WIA's first indicator of performance required States to report on an "entered employment rate." The WIA indicator measured individuals who were unemployed at the time of entry into the program and after receiving services, obtained employment, thus allowing the Departments to evaluate whether the WIA services were effective in helping unemployed individuals obtain employment. The proposed WIOA indicator is

different from WIA's "entered employment rate" indicator in two ways: (1) the time period for measurement in WIOA is the second quarter after exit instead of the first quarter; and (2) the statutory language under WIOA does not specify that the indicator is to measure entry into employment. The Departments plan to calculate both an "employment rate" for all participants in the program regardless of employment status at program entry and an "entered employment rate" for participants who were unemployed at the time of program entry. The Departments seek public comment on whether and how to collect information on the quality of employment and how WIOA's programs help employed and underemployed individuals find new or better jobs.

Proposed § 677.155(a)(1)(ii) implements WIOA's second statutory primary indicator of performance and is similar to the first, except that the time period for measurement is the fourth quarter after exit. This statutory language requires States to measure the employment rate of participants in the fourth quarter after exit from the program without regard to whether those participants were employed in the second quarter after exit from the program. Under WIA, this indicator is a retention measure that analyzes whether individuals who were employed in the first quarter after exiting from WIA services were still employed in the second and third quarters. As a retention measure such as the approach under WIA, this indicator would have counted participants who were employed in the second quarter after exit and measured of this group, who were still employed in the fourth quarter after exit from the program. The Departments seek comment on the advantages and disadvantages of collecting or reporting the employment retention rate in addition to the employer rate.

Proposed § 677.155(a)(1)(iii) implements WIOA's third statutory indicator found at sec. 116(b)(2)(A)(i)(III) and measures participants' median earnings in the second quarter after exit. This indicator measures median earnings at the same time frame as the first indicator measures

the employment rate of participants. The use of a median is a shift from the use of an average under WIA and is based on the language provided in WIOA.

Proposed § 677.155(a)(1)(iv) implements WIOA's fourth statutory indicator and measures post-secondary credential attainment and high school completion of program participants during participation in the program or within 1 year after exit. The proposed regulation defines this measure with the same language as the statute and includes the statutory language limiting participants who obtain a secondary school diploma or its equivalent to be included in the percentage counted as meeting the criterion only if the participant is employed or is enrolled in an education or training program leading to a recognized post-secondary credential within 1 year after exit from the program. The Departments specifically seek comment on clarifications that will be necessary to implement this indicator.

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

The Departments are considering using this indicator to measure interim progress of participants who may be enrolled in education or training services for a specified reporting period. For example, if a participant is enrolled in a 4-year registered apprenticeship program, the indicator would track the skills the participant gains throughout the reporting period, not just at the end of the 4-year training program. For low-skilled adults, this proposed indicator provides an opportunity to track progress in reading, writing, mathematics, and English proficiency while they are participating in an adult education program prior to completing the

high school credential and entering post-secondary education or training or employment. The measurable skill gains indicator will encourage local adult education programs to serve all low-skilled adults as Congress intended. Another example pertains to a participant who is training for multiple fields in the YouthBuild program. Such an individual may be pursuing certifications that require several years of experience, specific study hours, and demonstration of skills and knowledge prior to the final certification exam. The measurable skill gains indicator would capture documented progress on interim milestones leading up to the final certification. The measurable skill gains indicator is intended to capture important progressions through pathways that offer different services based on program purposes and participant needs and can help fulfill the Departments' vision of creating a workforce system that serves a diverse set of individuals with a range of services tailored to individual needs and goals.

In using this indicator as a measure of interim progress of participants, the Departments are considering how States can document progression during participation in an education or training program in a standardized way. Documented progress could include such measures as:

(1) the achievement of at least one educational functioning level of a participant in an education program that provides instruction below the post-secondary level;

(2) attainment of a high school diploma or its equivalent;

(3) a transcript or report card for either secondary or post-secondary education for 1 academic year (or 24 credit hours) that shows a participant is achieving the State unit's policies for academic standards;

(4) a satisfactory or better progress report, towards established milestones from an employer who is providing training (e.g., completion of on-the-job training (OJT), completion of 1 year of an apprenticeship program);

(5) the successful completion of an exam that is required for a particular occupation, progress in attaining technical or occupational skills as evidenced by trade-related benchmarks such as knowledge-based exams; and

(6) measurable observable performance based on industry standards.

The Departments seek comments on the proposed indicator and request comments on the ways States can measure and document participants' measurable skill gains in a standardized way, including whether time intervals are required and what time intervals might be. The Departments also seek comments on whether the performance targets for this indicator should be set at the indicator (i.e., measurable skill gains) or documented progress measure (e.g., attainment of high school diploma) level.

Proposed § 677.155(a)(1)(vi) implements the sixth statutory primary indicator related to effectiveness in serving employers. Under WIOA, the Departments are required to consult with stakeholders and receive public comment on proposed approaches to defining the indicator. As part of this requirement, the Departments have already sought public input on performance indicators generally and on the business indicators specifically through several avenues, including a town-hall meeting that addressed all of the primary indicators, a town-hall meeting convened with employers, numerous town-halls and webinars on WIOA across the country, and consultations with State Administrators for the AEFLA and Vocational Rehabilitation (VR) stakeholders. Because the Departments have not previously used this indicator, it is important to hear from States and stakeholders on what they consider core functions of their services to employers in order to best determine how to understand and measure the effectiveness of the services provided. Additionally, it is critical to hear from employers on the attributes of services that they find effective. In drafting the potential proposals described below, the Departments

consulted with a wide range of representatives to develop the indicators of effectiveness in serving employers as required by WIOA sec. 116(b)(2)(A)(i)(VI). See WIOA sec. 116(b)(A)(2)(iv) and 116(b)(4)(B).

Based on the consultations, the Departments have established several potential approaches to measuring the effectiveness of serving employers, including potential measures that could be used. One of the Departments' principal concerns in crafting a final definition of this indicator is minimizing burden that measuring this indicator will impose on employers in order to avoid discouraging employer engagement with the workforce and education systems. The Departments value the interaction of employers with the workforce and education systems and do not want to impose any barriers to that interaction. With this in mind, the Departments' proposed approaches aim to minimize employer burden while still attempting to measure the effectiveness of how the Departments' programs serve employers.

One approach to measure this indicator is to measure employee retention rates tied to the employment they obtained after receiving WIOA services. Under this approach, States would be required to use wage records to identify whether or not a participant matched the same Federal employer identification number (FEIN) in the second and fourth quarters. This approach has the lowest burden on employers, as it requires no action from the employer. Under this approach, WIOA's services are effectively serving an employer if that employer hires a WIOA participant and the participant is still employed by that employer in the fourth quarter (up to a year) after program exit. The Departments would be interested in specific comments around the feasibility of this, and if it measures the systems' effectiveness in serving employers.

Another potential way to define this indicator would measure the repeat/retention rates for employers' use of the core programs. The Departments seek comments around this approach,

including how States could capture this data, the feasibility of capturing and reporting this data, and if this indicator would measure the efficacy of the services provided to employers.

The Departments are also considering using the number or percent of employers that are using the core program services out of all employers represented in an area or State served by the system (i.e., employers served) as a measure of the effectiveness of serving employers. Employer usage may reflect the effectiveness of the system's ability to reach out to employers, convey the services the core programs provide, and meet employers' needs. The Departments seek comment on the feasibility of capturing this data accurately, the validity of such an approach in measuring effectiveness of program services, and the usefulness of this approach in managing employer services.

The Departments are proposing to look at this as a shared indicator across programs, as many employers are served by multiple programs. Another approach could be to apply this measure to individual core programs. The Departments seek comment on the relative merits of each approach. The Departments also seek comment about whether a single metric for this indicator would sufficiently capture effectiveness in serving employers or if this indicator should encompass a combination of metrics, including how these metrics could most effectively be combined.

Understanding that an array of programs provide services to employers, the Departments seek public comment on additional ways to measure the core programs' effectiveness in serving employers.

Proposed § 677.155(b) applies the six indicators outlined in proposed § 677.155(a)(1) to the adult and dislocated worker programs under title I of WIOA, the AEFLA program under title II of WIOA, and the Vocational Rehabilitation program as amended by title IV of WIOA.

Proposed § 677.155(c) applies the primary indicators of performance in proposed §§ 677.155(a)(1)(i)-(iii) and (vi) that States must include in their Unified or Combined State Plans for the Employment Services as amended by WIOA title III. Those indicators of performance which apply to the Employment Services are: (1) the percentage of program participants who are in unsubsidized employment during the second quarter after exit from the program; (2) the percentage of program participants who are in unsubsidized employment during the fourth quarter after exit from the program; (3) the median earnings of program participants who are in unsubsidized employment during the second quarter after exit; and (4) the effectiveness in serving employers. The Departments also seeks comments on how to best measure the Wagner-Peyser Employment Services' effectiveness in serving employers.

Proposed § 677.155(d)(1)-(6) identifies the primary indicators of performance that States must to address in their Unified or Combined State Plans for the youth program under WIOA title I. The youth indicators apply universally to the youth workforce investment program and, therefore, apply to in-school and out-of-school youth as defined in WIOA sec. 129(a)(1)(B) and (C).

Proposed § 677.155(d)(1) implements the first statutory indicator for youth, which measures the percentage of program participants who are in education or training activities, or in unsubsidized employment, during the second quarter after exit from the program. Under WIA, States report on a placement rate, which measures a youth's placement in either education or employment, after exiting from the program. The WIOA indicator differs from WIA's placement rate in three ways. First, the time period for measurement in WIOA is the second quarter after exit instead of the first quarter after exit. Second, the placement rate under WIA only allowed post-secondary education to be reported; whereas, under WIOA, any education,

including secondary and post-secondary, is reported. Third, the placement measure under WIA excluded those youth who were enrolled in post-secondary education, employed, or in the military at the time of participation; WIOA's indicators do not make these exclusions. WIA's measure provided insight into how many youth came to a program not enrolled in post-secondary education, employed, or in the military, and then after receiving services, obtained employment or were placed into post-secondary education or training program. Under WIOA, this indicator does not provide for this exclusion and the Departments' proposed indicator measures placement in the second quarter after exit of all participants.

Proposed § 677.155(d)(2) implements the second statutory indicator that applies to the WIOA youth program under title I. This indicator under sec. 116 of WIOA is similar to the first indicator in that it is the percentage of program participants who are in an education or training program or in unsubsidized employment in the fourth quarter after exit. The Departments propose that this indicator measure whether a participant is in education, training or unsubsidized employment in the fourth quarter.

Proposed § 677.155(d)(3) implements the third statutory indicator that applies to the youth program under WIOA title I. This indicator measures median earnings in the second quarter after participants exit from the program. States must report the median point for earnings for all program participants in unsubsidized employment in the second quarter after exit. This indicator measures earnings in the second quarter after exit, which is the same time frame in which the States will measure if program participants are in education or training activities or unsubsidized employment.

Proposed § 677.155(d)(4) implements the fourth statutory indicator and measures post-secondary credential attainment and high school completion of program participants who have

exited from the youth program under WIOA title I. The language of the proposed regulation is the same as the indicator in § 677.155(a)(1)(iv). The Departments have provided an in-depth explanation of this in the preamble for § 677.155(a)(1)(iv) and therefore, refer readers to this section for more information on this definition.

Proposed § 677.155(d)(5) implements the fifth statutory indicator and pertains to measurable skill gains. The language of the proposed regulation is the same as the indicator in § 677.155(a)(1)(v). The Departments have provided an in-depth explanation of this in the preamble for § 677.155(a)(1)(v) and refers readers to this section for more information on this definition.

Proposed § 677.155(d)(6) implements the sixth statutory indicator and is the same language for the indicator in § 677.155(a)(1)(vi). The Departments have provided an in-depth explanation of this in the preamble for § 677.155(a)(1)(v) and refers readers to this section for more information on this definition.

§ 677.160 What information is required for State performance reports?

Proposed § 677.160 identifies the information States are statutorily required to report in the State performance report under WIOA sec. 116(d)(2). The Departments agree that integrated performance reports would facilitate assessment of WIOA performance across programs. The proposed regulation reorganizes in a more user-friendly format the WIOA statutory requirements for the State performance reports.

Section 116(d)(1) of WIOA requires the Departments to provide a performance reporting template for each of the performance reports required in secs. 116(d)(2)-(4) of WIOA. The Departments will seek public comment on the reporting templates through the PRA process. In developing these report templates, the Departments will seek to maximize the value of the

templates for workers, job seekers, employers, local elected officials, State officials, Federal policy-makers, and other key stakeholders, and seek feedback on the formats that will be most useful for each audience through the PRA process. The Departments will seek to align performance reports to the extent possible while maximizing the value of each report for its primary audience, in order to have comparable reporting elements across all core programs in keeping with the shared statutory performance requirements. Aligning the reports and performance definitions will create a performance accountability system that is easier to understand and assess the effectiveness of States in achieving positive outcomes for individuals served by these programs.

Proposed § 677.160(a) implements the reporting provisions of WIOA sec. 116(d)(2) for the State performance reports.

Proposed § 677.160(a)(1) requires States to report the number of participants served and the number of participants who exited from each of the core programs identified in WIOA sec. 116(b)(3)(A)(ii).

Proposed § 677.160(a)(1)(i)-(ii) implements WIOA's statutory requirement that the States include a count of the number of participants and exiters served that are individuals with barriers to employment, disaggregated by those barriers as defined in WIOA sec. 3(24) and that are co-enrolled in any of the programs in WIOA sec. 116(b)(3)(A)(ii) in the State performance report. Additional reporting information required under WIOA sec. 116(d)(2) in regard to participants and exiters are age, sex, and race and ethnicity. The provisions of the statute are clear in what is required and the Departments have proposed rule text to coincide with the statutory language.

Proposed § 677.160(a)(2) implements WIOA's statutory requirement that States include the levels achieved for the primary indicators of performance listed in § 677.155 in the performance report. This section also requires that the States' performance report include disaggregated levels for individuals with barriers to employment as defined in WIOA sec. 3(24), as well as age, sex, race, and ethnicity as required by sec. 116(d)(2) of WIOA.

Proposed § 677.160(a)(3)-(7) implements WIOA's statutory requirement that States report information on career and training services including: (1) participant and exiter counts by career and training services, (2) the performance levels achieved for the primary indicators consistent with § 677.155 for career and training services, (3) the percentage of participants who are placed into training-related employment, (4) the amount of funds spent on each type of career and training service, and (5) the average cost per participant for participants who received career and training services.

The Departments propose that these requirements are applied based on the applicable services provided by a core program. For example, the Employment Services do not provide training services and as such would not be required to report on training related information – they would only report on the applicable career services that they provide. Similarly, the AEFLA program also only provides certain career services, through the one-stop delivery system, and as such, reporting would only be required with respect to applicable career services that the program provides. Requiring programs to report on services they do not provide would create an additional and unnecessary reporting burden. This interpretation is in line with sec. 504 of WIOA, which requires the Departments to simplify and reduce reporting burdens. (Further information on the career and training services is found at 20 CFR 680.150 and

680.200.) Additionally, the Departments interpret these provisions as prospective provisions that do not require retroactive collection of information.

Proposed § 677.160(a)(3) implements the requirement for core programs to report on the number of participants and exiters in a program who received career and training services. Other than the proposed limitation that this be reported by a program based on the applicable services it provides, the statutory language is clear in the requirement and propose to implement as stated.

Proposed § 677.160(a)(4) requires States to provide information on the performance levels achieved for the primary indicators consistent with § 677.155 for career and training services for the most recent program year and the 3 preceding program years, as applicable to the program providing services. The Departments interpret this provision to apply to the core programs only with respect to the applicable services they provide and have more fully discussed this rationale above.

Proposed § 677.160(a)(5) requires States to include the percent of participants in a WIOA title I program who obtained unsubsidized employment related to the training received. This provision implements WIOA's statutory requirement that States report on training-related employment. WIOA sec. 116(d)(2)(G) requires States to report on the participants in programs "authorized under this subtitle." Section 116 is in subtitle A, which does not authorize any programs under WIOA. Therefore, the Departments interpret this provision of WIOA to mean that States must report on core programs authorized by title I.

Proposed §§ 677.160(a)(6) and (a)(7) require States to report on the amount of funds spent on each type of career and training service as well as the average cost per participant for participants receiving career and training services for the most recent program year and the 3

preceding program years. The Departments interpret this provision to apply to the core programs only with respect to the applicable services they provide as discussed above.

Proposed § 677.160(a)(8) implements WIOA's statutory requirement that States report on the percent of the State's annual allotment under WIOA sec. 132(b) that the State spent on administrative costs.

Proposed § 677.160(a)(9) implements the WIOA statutory allowance for the collection of information that facilitates comparisons of programs with programs in other States. The Departments are considering collecting a variety of supplemental information such as outcomes for Unemployment Insurance claimants, reportable individuals, and other subgroups served by the core programs, as well as additional outcomes, such as entered employment (the number of individuals who were unemployed when coming into a program and obtained employment following program exit) or employment retention (the number of people who were employed in a quarter that remained employed in subsequent quarters) and information about participants enrolled in education or training programs that do not lead to a recognized post-secondary credential as potential performance information for inclusion in the State annual report narratives. The Departments are also considering the addition of a supplemental customer service measure, which would assess the quality of services provided to American Job Center customers. This measure would not be a primary indicator of performance, but would be used as a tool for tracking the quality of the customer experience. The Departments seek comment on how to structure such a measure (e.g., using the net promoter score) and whether the inclusion of such a measure would be valuable.

Proposed § 677.160(a)(10) implements WIOA's requirement that if at least one local area within a State is implementing a Pay-for-Performance contract strategy, the States' title I

programs must provide a State narrative report that contains the performance reporting requirements regarding pay-for-performance contracting strategies, including the performance of service providers entering into contracts for pay-for-performance strategies and evaluation of the design of the programs and the performance strategies. Additionally, this provision requires the evaluation of program design and activities that require narrative in order to meet the requirements of the provision. The Departments interpret this provision to only apply to title I programs and only to apply to those States in which Pay-for-Performance contracting strategies are being implemented. Pay-for-performance contracting provisions are only included in the title I programs. Requiring programs to report on services and contracting mechanisms they do not provide or employ would create an additional and unnecessary reporting burden. This interpretation is in line with sec. 504 of WIOA, which requires the Departments to simplify and reduce reporting burdens.

Proposed § 677.160(b) requires States to comply with WIOA sec. 116(d)(6)(C). This section of WIOA prohibits the disaggregation of data for a category in the State performance report if the number of participants in that category is insufficient to yield statistically reliable information or when the results would reveal personally identifiable information about a participant. As written, WIOA sec. 116(d)(2) requires the performance report to be subject to WIOA sec. 116(d)(5)(C). However, this section refers to Data Validation, and the Departments interpret this reference to require States to comply with sec. 116(d)(6)(C) which ensures the Departments receive statistically reliable information and protects participants' privacy. The Departments will issue guidance on these issues.

Proposed § 677.160(c) requires that the State performance report include a mechanism for electronic access to the State's local area and eligible training provider (ETP) performance

reports. This provision does not require the State to submit the actual local area and ETP performance reports with their State report.

Proposed § 677.160(d) proposes that the Departments will require compliance with these requirements in sec. 116 of WIOA as explained through joint guidance. The Departments may request information on reportable individuals for the purpose of understanding the number of individuals who are accessing services, including self-services and information-only services, and for other purposes, including costs.

§ 677.165 May a State require additional indicators of performance?

Proposed § 677.165 is updated to reflect WIOA citations. The provision of additional performance indicators proposed by the State remains unchanged.

§ 677.170 How are State adjusted levels of performance for primary indicators established?

Proposed § 677.170 outlines the process that will be followed and the factors that will be considered in determining adjusted levels of performance.

Proposed § 677.170(a)(1) implements the requirement in sec. 116(b)(3)(A)(iii) that States provide expected levels of performance in the Unified or Combined State Plan for the first 2 years of the plan. Proposed § 677.170(a)(2) requires the State to submit expected levels for the third and fourth year before the start of the third PY covered by the Unified or Combined State Plan. This requirement is needed to implement the statutory requirement in WIOA sec. 116(b)(3)(A)(iv)(II) that the State reach agreement with the Secretaries on the negotiated levels of performance before the start of the third PY.

Proposed § 677.170(b) requires that the Secretaries will reach agreement with the States on negotiated levels of performance based on the factors in sec. 116(b)(3)(A)(v) of WIOA, and proposed § 677.170(c) provides that the Secretaries will disseminate a statistical adjustment

model that will be used to make the adjustments in the State adjusted levels of performance for actual economic condition and characteristics of participants including the factors required by WIOA sec. 116(b)(3)(A)(viii). The statistical adjustment model must be developed after consultation with specified stakeholder groups, including appropriate external experts. The Departments request comment on whether any additional factors beyond those in the statute should be considered in developing the model, and the best approach to updating the model as necessary.

Proposed § 677.170(d)(1) provides for the application of the model to the primary indicators for the core programs based on the availability of data to sufficiently populate the model. For example, baseline data will be required to populate the model. None of the core programs will have this data for the new indicators of performance, such as the measurable skill gains indicator, until after States have begun reporting data for the indicator.

Proposed §§ 677.170(d)(2)-(3) provide our interpretation that the model will be applied twice in the PY. Specifically, the model will generate an estimate of expected performance to serve as a framework for negotiating performance targets for the upcoming PY; the model will also be applied at the end of the PY to adjust expectations for performance levels based on actual circumstances. This interpretation is required by WIOA sec. 116(b)(3)(A)(vii), which states that the negotiated levels will be revised based on the model. This approach is similar to that utilized under WIA's predecessor, the Job Training Partnership Act (JTPA), which applied an objective statistical model in order to develop targets and then updated the model based on actual circumstances at the end of a PY. Under JTPA, models were established for each required indicator and sec. 116 of WIOA intends a similar process.

Proposed § 677.170(e) requires compliance with these requirements from sec. 116 of WIOA as explained in joint guidance issued by DOL and ED for subsequent programmatic guidance to be issued for programs concerning the model, and its application.

§ 677.175 What responsibility do States have to use quarterly wage record information for performance accountability?

Proposed § 677.175 implements the requirement in sec. 116(i)(2) of WIOA, that States use quarterly wage records, consistent with State law, to measure State and local progress on the performance accountability measures.

The use of quarterly wage records is essential to achieve full accountability under the WIOA performance accountability system to identify high performing States and localities, and, if necessary, to provide technical assistance to help improve performance or sanction low performing States and localities. Matching participant social security numbers against quarterly wage record information is the most effective means by which timely and accurate data can be made available to the system.

Proposed § 677.175(a) requires States to use quarterly wage record information to measure States' and local areas' progress on the adjusted levels of performance for the primary indicators of performance. WIOA sec. 116(i)(2) requires the Secretary of Labor to make arrangements, consistent with State law, to ensure that the wage records of any State are available to other States to carry out the State plan or to complete the 116(d) annual report. Proposed § 677.175(a), therefore, expressly authorizes the use of participants' social security numbers to measure participants' progress through quarterly wage records.

Section 136(f)(2) of WIA required the Secretary of Labor to make arrangements to ensure that wage records of each State are available to any other State. Under this requirement,

the Secretary worked with the States to create the Wage Record Interchange System (WRIS) and WRIS2. WRIS and WRIS 2 are automated networks that allow participating States to query the wage records of other participating States for the purpose of assessing and reporting on State and local employment, training, and education program performance. WRIS 2 allows States to share information for the purposes of reporting on outcomes for employment, training, and education programs and currently has approximately 36 States participating. WRIS was narrower and only allowed for reporting on outcomes for employment and training programs; there are currently 50 States participating in WRIS. These data sharing agreements greatly increased accuracy in States' performance reporting and helped the Departments evaluate the effectiveness of educational and training programs. Given that WIOA expands the common performance measures and common reporting standards across all WIOA programs, including employment, education and training programs, the Departments intend to engage in a renegotiation of WRIS data sharing agreements with States, which will allow States to conduct interstate wage matches for all WIOA programs.

Proposed § 677.175(b) defines quarterly wage record information as the intra and interstate wages paid to an individual, the social security number of the individual, and the name, address, State, and the FEIN of the employer paying the wages to the individual. This definition clarifies that the Departments interpret WIOA's reference to quarterly wage records in sec. 116(i)(2) to mean all of the wages an individual earned in any State. In today's economy, WIOA participants may receive services in one State and have work, or have wages reported, in another State. Therefore, in defining "quarterly wage records" as the interstate and intrastate wages, the Departments hope to encourage States to conduct interstate wage queries to accurately report on an individual's wages after participating in a WIOA program.

3. Subpart B—Sanctions for State Performance and the Provision of Technical Assistance

§ 677.180 What State actions are subject to a financial sanction under Workforce Innovation and Opportunity Act sec. 116?

Proposed § 677.180 outlines performance and reporting requirements that are subject to sanctions under sec. 116(f) of WIOA.

Proposed § 677.180(a) provides that only the failure to submit the State annual performance reports required under sec. 116(d)(2) of WIOA is sanctionable. Section 116(f)(1)(B) of WIOA requires the Departments to assess a sanction if "a State fails to submit a report under subsection (d) for any PY." There are three reports required under sec. 116(d): the State annual performance reports, the local area performance reports, and the ETP performance reports. However, of these, only the State annual performance reports must be submitted by the State to the Secretary of Labor and the Secretary of Education.

Proposed § 677.180(b) implements the requirement in sec. 116(f)(1) of WIOA that sanctions for performance failure be based on the primary indicators of performance at § 677.155 of this part for the core programs: the adult, dislocated worker, and youth programs under WIOA title I, the AEFLA programs under title II, the program under the Employment Services authorized by the Wagner-Peyser Act, as amended by title III, and the Vocational Rehabilitation program under the Rehabilitation Act of 1973, as amended by title IV.

§ 677.185 When are sanctions applied for failure to report?

Proposed § 677.185 outlines the circumstances under which a State may be sanctioned for failure to report under sec. 116(f)(1)(B) of WIOA.

Under proposed § 677.185(a)(1), it would be a failure to report if a State submits its annual performance reports on any date later than the date for submission set in guidance. The Departments propose to deem any late submission a failure to report because the Departments are concerned that setting the date for reporting failure at some later time would effectively extend the deadline for submission of the reports. The date for submission will be set in guidance by the Departments. In addition, under § 677.185(a)(2), the Departments propose that it would be a failure to report if the State submits a report on a timely basis, but the report is incomplete, including failure to include a mechanism to access the local area performance reports and ETP performance reports. This proposal is based on the Departments' concern that if only timeliness is required, States could not be sanctioned for submitting reports that do not meet statutory requirements for reporting elements. If a State fails to submit a State annual performance report, it will be subject to a 5 percent sanction of the Governor's Reserve allotment as discussed in § 677.195 of this part.

Proposed § 677.185(b) outlines the exceptional circumstances that would exempt a State from sanction in the case of failure to report under WIOA sec. 116(f)(1)(B). The statute provides that a failure to report can be excused by either Secretary in the case of exceptional circumstances but does not define these circumstances. This proposal provides a non-exclusive list of exceptional circumstances beyond the State's control that would be likely to cause a significant disruption in the State's ability to submit timely, accurate, and complete performance reports. Reporting challenges that are routine or predictable would not qualify, because the statute requires the exception to be based on circumstances that are exceptional.

Under proposed § 677.185(c)(1), the Departments would require States to notify the Secretary of Education or Labor of exceptional circumstances as soon as possible but no later

than 30 days prior to the established deadline for the State annual reports to request an extension to the reporting deadline. This minimum 30-day period for notification would provide the Secretaries with adequate opportunity to review the extension request and assess whether the circumstances underlying the request fit within the statutory exception.

Proposed § 677.185(c)(2) deals with circumstances where an exceptional circumstance arises less than 30 days before the reporting deadline. Under this proposal, the Secretaries will review the request under guidance that the Departments will issue to deal with procedures for extension requests with less than 30 days' notice.

§ 677.190 When are sanctions applied for failure to achieve adjusted levels of performance?

Proposed § 677.190 explains how States will be assessed for performance failure and when such failures will result in a financial sanction. Though the Departments have referenced other non-core programs in previous sections, performance success or failure will be based solely on the six core programs consistent with sec. 116(b)(2) and (f)(1) of WIOA.

Proposed § 677.190(a) explains, consistent with § 677.170, that the statistical adjustment model will be applied at the end of a PY to adjust expected levels of performance based on actual economic conditions experienced and the characteristics of participants.

Proposed § 677.190(b) clarifies that a determination that a State has failed performance will be based on the performance levels achieved after the application of the statistical adjustment model, pursuant to WIOA sec. 116(f)(1) which states that sanctions must be assessed if a State fails to meet adjusted levels of performance. In addition, this proposed section restates statutory language that requires the Secretary of Labor or Education to provide technical assistance, as appropriate, to include assistance with the development of a performance improvement plan in any year when a State fails to meet the adjusted levels of performance.

Proposed § 677.190(c) outlines the three criteria that will be used to assess a State's performance at the end of a PY: an overall State program score, an overall State indicator score, and individual indicator scores. The overall State program score would be an average score based on the percent of the State adjusted goal achieved on each of the six primary indicators for a core program. The overall State indicator score would be based on an average score of the percent of the State adjusted goal achieved across core programs on each of the six primary indicators. The individual indicator scores would be based on the percent of the State adjusted goal achieved on any single primary indicator for each of the six core programs.

Table 1 below illustrates the manner in which each State is proposed to be assessed using the overall State program score and the overall State indicator score. Under this proposal, a failing average program score for any core program, a failing average indicator score for any indicator across programs, or a failing score on any individual indicator for each of the core programs would be a performance failure under sec. 116(f)(1) of WIOA. The Departments propose this approach because it provides accountability for all programs and all measures. For example, a State that on average falls below its median earnings target threshold across all programs would be subject to sanctions even if its performance on other indicators is satisfactory. The Departments seek comment on whether to use a weighted average or a straight average for purposes of each overall indicator score.

Table 1. State Program Score and State Indicator Scores

Indicator/Program	Title II Adult Education	Title IV Rehabilitative Services	Title I Adults	Title I Dislocated Workers	Title I Youth	Title III Wagner - Peyser	Average Indicator Score
Employment 2nd Quarter After Exit							1
Employment 4th Quarter After Exit							2

Median Earnings 2nd Quarter After Exit							3
Credential Attainment Rate							4
Measurable Skill Gains							5
Effectiveness in Serving Employers							6
Average Program Score	7	8	9	10	11	12	-

As shown in Table 1, there are a total of 12 scores on which a State will be assessed for the proposed overall State indicator score and overall State program score criteria proposed. The first six averages on which a State is assessed are the average indicator scores across the core programs. The second six averages on which a State is assessed are the average program scores across each of the six indicators. The first six scores will be the average of the core programs' percent achieved against their adjusted goals on the first indicator (employment in the second quarter after exit). The second six scores are the average of the core programs' percent achieved against their adjusted goals on the second indicator (employment in the fourth quarter after exit). For the Employment Services, the Departments propose to exclude indicators four and five because WIOA exempts the Employment Services from these indicators. Therefore, the Departments propose that the program score for the Employment Services be comprised of the total average score of the percent achieved by the States' Employment Services against their targets for indicators one, two, three, and six only. In addition, the Departments propose to phase in the inclusion of the measurable skills gain and effectiveness in serving employers indicators.

Proposed § 677.190(d) establishes two thresholds for performance failure. The first threshold at proposed § 677.190(d)(1) is 90 percent for each of the overall State program scores and the overall State indicator scores. The Departments are considering potentially setting this threshold higher to emphasize the importance of performance success and would be interested in specific comments on the established levels for success/failure in assessing performance under WIOA for the core programs. The second threshold in proposed § 677.190(d)(2) establishes a minimum threshold of 50 percent for the individual indicator scores. The Departments consider this minimum threshold of performance critical for the purpose of underscoring the need to achieve and maintain successful performance with respect to each individual performance indicator, regardless of average performance across performance indicators and across core programs. The Departments seek comment on the implications of the proposed methodology, including the three criteria and associated thresholds for failure established under this proposed regulation (i.e., the overall State indicator score [90 percent of adjusted goal], the overall State program score [90 percent of adjusted goal], and the individual indicator scores [50 percent of adjusted goal]).

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

The Departments seek comment on the specific timelines for reporting outcomes on the core indicators of performance as well as the timing for using the annual State report to determine success or failure against adjusted levels of performance. Under WIA's performance accountability provisions, titles I and II use the performance information reported in the State's annual reports. Under WIA, these data have a built-in time-lag. WIOA establishes an employment indicator that extends the time-lag even further. The fourth quarter employment

indicator would not be available until six quarters after a participant has exited. Given the inherent lag, by statutory definition, in the indicators, the Departments seek comment on the specific operational timelines for determining which performance outcomes to use for assessing performance. Specifically, the Departments seek comment on which State report should be the first annual State report used to assess performance against the State's adjusted levels of performance. In the event of performance failure in the first year, the Departments are seeking comment on when the performance improvement plan should be developed and, in the event there is performance failure in the second consecutive year, when the financial sanction should be applied. To the extent possible, the Departments would like to tie ultimate imposition of financial sanction with the performance improvement plan process, such that States have the chance to avoid financial sanction if they successfully execute the reforms included in their performance improvement plan. The Departments welcome comment on how best to accomplish this goal.

In addition to timelines for calculating a State's performance against its adjusted levels of performance, the Departments seek comment on the timelines for implementing the full accountability system to include determining performance failure for sanctions. Because WIOA introduces new indicators on which no historical data exist, there is a need to establish baseline benchmarks from which to establish adjusted levels of performance under WIOA. For this reason, the Departments seek comment on the transition timing of the performance accountability system as WIOA is implemented.

Proposed § 677.190(e) outlines the statutory process under which performance failure by any State for 2 consecutive years will result in a performance sanction.

§ 677.195 What should States expect when a sanction is applied to the Governor's Reserve Allotment?

Proposed § 677.195 explains what will occur when a sanction is applied to the Governor's Reserve for failure to report or failure to meet adjusted levels of performance. It clarifies that the sanction will be 5 percent of the amount that could otherwise be reserved by the Governor. Section 116(f)(1)(B) of WIOA provides that "the percentage of each amount that would . . . be reserved by the Governor under section 128(a) [Governor's Reserve fund] . . . shall be reduced by five percentage points."

This provision is ambiguous and could be interpreted to require a percentage point reduction in the overall State allotment that could otherwise be reserved by the Governor. For example, under a percentage point-based interpretation, if the total State allotment was one million dollars, and the Governor could reserve 15 percentage points of the State allotment for a total of $150,000 reserved, the reduced amount of the Governor's Reserve after a sanction of five percentage points would be 10 percent of the State allotment (i.e., $100,000).

The better reading is that the maximum amount that could otherwise be reserved would be reduced by 5 percent. For example, under this scenario, if the State allotment was one million dollars, and without a sanction the Governor could reserve $150,000, the amount of the Governor's Reserve after sanctions would be 95 percent of the amount that could otherwise be reserved (i.e., $142,500), or in other words, the $150,000 reserve less the 5 percent sanction. This is a better reading because a reading that required a reduction of percentage points of the overall allotment, rather than the percentage reserved by the Governor, would be unnecessarily punitive and inconsistent with the overall intent of WIOA. The Departments are further

concerned that such an extreme reduction would frustrate the State's ability to take actions to improve performance or submit timely, complete, and accurate performance reports in the future.

Proposed § 677.195(b) clarifies that if, in the same PY, a State fails under proposed § 677.195(a)(1), failure to report in any given PY, and fails under proposed § 677.190(a)(2), failure to meet adjusted levels of performance for 2 consecutive program years, then sanctions in the amount of 5 percent will be applied for each of these failures. The maximum sanction therefore that could be applied to a State in any given PY is 10 percent of the maximum available amount of the Governor's Reserve allotment – for failure to submit a performance report and for failure to meet adjusted levels of performance for 2 consecutive program years. The Departments are seeking comment on this interpretation of the language under WIOA sec. 116(f), as well as the implications of this proposed regulation. The Departments also note that the application of sanctions against the Governor's Reserve does not preclude the Departments from pursuing other avenues of enforcement as permitted under applicable laws.

Proposed § 677.195(c) clarifies the statutory requirement in sec.116 (f)(1)(B) of WIOA that a sanction be applied until such a time as the Secretaries of Education and Labor determine that performance levels have been met and the State annual performance reports have been submitted. The immediately following PY is the first point at which the Departments could reasonably determine that a State that has previously failed performance has met adjusted levels of performance because the statistical adjustment model is only applied at the beginning and the end of the year and not at the time of the quarterly reports. The Departments interpret this statutory provision to mean that the reduction continues for the entire PY with no earn-back potential. This interpretation is consistent with the imposition of a sanction. If a State could earn its full reserve allotment even if it submitted its State annual performance report 6 months

after the deadline, reporting deadlines would be undermined and there would be little incentive for timely reporting. In addition, appropriations law prevents us from redistributing funds in a later PY. Finally, the proposal clarifies that the State will continue to have a sanction at the reduced amount of the total allotment of the Governor's Reserve in successive PYs if they continue to fail to meet expected levels of performance, or fail to report.

All performance reports required under sec. 116(d) of WIOA, are critically important for accountability purposes; however, as discussed above for proposed § 677.180, because the State annual performance reports are the only of these reports submitted by the State to the Departments, they are the only reports that are subject to sanctions. All required reports must be provided on a timely basis irrespective of the applicability of sanctions.

Proposed § 677.195(d) identifies that a State may request a review of any sanction DOL imposes in accordance with the provisions outlined in 20 CFR 683.800.

The Departments also request comments on the specific approach outlined above, as well as generally on 1) how to define "fails to meet the State adjusted levels of performance," and 2) how to operationalize the Departments' approach to applying sanctions for both failure to submit a performance report and performance failure (i.e., a maximum sanction of 10 percent), including when sanctions should be applied. The Departments are considering whether failure to submit a performance report would automatically constitute failure to meet State adjusted levels of performance, resulting in the maximum sanction of 10 percent (5 percent for failure to submit a performance report and 5 percent for failure to meet State adjusted levels of performance). In order to encourage States to submit the performance report and avoid the maximum potential sanction, the Departments are considering a definition of performance failure that would provide

a final deadline for the States to submit their performance data and avoid a sanction for failure to meet the State's adjusted levels of performance.

§ 677.200 What other administrative actions will be applied to States' performance requirements?

Proposed § 677.200 outlines the circumstances under which a State will be subject to additional administrative actions when determined to be at risk due to low performance on an individual primary indicator.

Proposed § 677.200(a) identifies the circumstances under which administrative actions would be triggered outside of the sanctions process. While States' performance on the primary indicators will be aggregated into an overall program score and overall indicator score to assess performance failure, the individual indicators will be assessed, as explained in guidance, in order to establish whether a program's performance is at risk. While sanctions are based on performance and reporting failures, the Departments want to foster a workforce system that is focused on achieving success, not just avoiding failure. Early intervention in the event of performance problems is necessary for States to achieve successful outcomes. Accordingly, to assist the States in performing well for all one-stop customers, the Departments propose alternate administrative actions for performance issues that do not rise to the level of sanctionable failure.

Under proposed § 677.200(b) if a single primary indicator for a State's programs is determined to be at risk, as explained in guidance issued by DOL or ED, the State must develop and submit a performance risk plan to outline the primary reasons for low performance and the steps they are taking to improve performance and ameliorate the risk for that indicator or indicators. This will require States to take a proactive approach to addressing performance concerns before they rise to the level of failure. The Departments propose that the levels set for

administrative actions will be explained in guidance so that the Departments can adjust the levels as needed as the Departments gain programmatic experience with the new WIOA performance measures. As these levels will not be the subject of financial sanctions but are instead within the Departments' general monitoring responsibilities, the inclusion of the levels in regulation is not required.

4. Subpart C—Local Performance Accountability for Workforce Innovation and Opportunity Act Title I Programs

§ 677.205 What performance indicators apply to local areas?

Proposed §§ 677.205(a) and (b) implement sec. 116(c) of WIOA and clarify that for the core programs under title I of WIOA each local workforce area will be subject to the same primary indicators as States, although Governors may elect to apply additional performance indicators to local areas. Proposed § 677.205(c) outlines and explains that local area reports are required to be reported on the standard template that the Departments will provide under WIOA sec. 116(d)(1); be made available to the public on an annual basis, including by electronic means; and must include, at a minimum, the local areas' performance levels achieved with respec t to the primary indicators under § 677.155 as well as additional information States are required to report under WIOA sec. 116(d)(3). This section largely summarizes statutory language in WIOA and establishes the proposed framework for guidelines and instructions that the Departments plan to issue later to implement and carry out the performance reporting requirements of WIOA sec. 116. In addition, proposed § 677.205(c) requires the State to provide electronic links to the local area performance report as part of its annual State performance report. The Departments propose this requirement because while WIOA sec. 116(d)(6)(B) requires the State to make the local report publicly available, sec. 116(d)(6)(D) requires the

Secretaries to disseminate these reports to Congress. The proposal will enable the Departments to fulfill this statutory requirement.

Proposed §§ 677.205(d) and (e) outline the minimum required information to be provided in those reports consistent with sec. 116(d)(3) of WIOA. Under proposed § 677.205(d), the local area reports must contain information on actual performance levels achieved (consistent with § 677.175, regarding the use and aggregation of interstate and intrastate wage records) on the primary indicators as outlined in § 677.155. Under proposed § 677.205(e), States must also make available performance information for their local areas for the adult, dislocated worker, and youth programs under WIOA title I consistent with § 677.160(a). States are also required to make available information on the percentage of a local area's allotment under WIOA sec. 128(b) and 133(b) that the local areas spent on administrative costs as well as any other information that may be proposed in guidance from the Secretary of Labor to facilitate comparisons of programs, with other programs in local areas or planning regions as deemed appropriate.

Proposed § 677.205(f) reiterates that States are responsible for compliance with any associated guidance, including the use of the performance reporting template, issued by the Secretary of Labor for compliance with local area performance reporting requirements.

§ 677.210 How are local performance levels established?

Proposed § 677.210 describes the process to be utilized to establish local performance targets prior to the start of a PY and, subsequently, to establish performance levels based on actual circumstances at the conclusion of a PY. The proposed process is similar to the proposed language for establishing State performance levels, including the negotiations process, which is

proposed to be developed and disseminated by the Governor and conducted with the Local Boards and CEOs.

Proposed § 677.210(a) implements the requirements of sec. 116(b)(3)(A)(viii) of WIOA to apply a statistical adjustment model in the establishment of local area adjusted levels of performance. It requires the Departments to run the model at the beginning of a PY and at the end of the PY to revise adjusted levels of performance based on actual conditions experienced and the characteristics of participants.

Proposed § 677.210(b)–(c) requires that the Governor, Local Board, and CEO reach agreement on local targets and adjusted levels of performance based on a negotiations process prior to the start of a PY. The Governor is to establish a negotiations process and disseminate it to all of the Local Boards and CEOs.

Proposed § 677.210(d) states that Local Boards have the authority to establish performance targets for service providers in a local area. Setting performance targets will help local areas in evaluating the performance of service providers, managing programs at the local level, and determining whether to maintain or change providers. This also allows locals some flexibility in the way they structure their service delivery design while taking into account the performance requirements for a local area. The Departments suggest that the local area should consider its negotiated local performance levels, the services to be provided by each provider, and populations the service provider is intended to serve in developing these targets. Targets may vary by provider and may be different from the local area's performance measures.

5. Subpart D—Incentives and Sanctions for Local Performance for Workforce Innovation and Opportunity Act Title I Programs

§ 677.215 Under what circumstances are local areas eligible for State Incentive Grants?

Proposed § 677.215 outlines the circumstances in which a local area is eligible for an incentive grant.

Proposed § 677.215(a) implements sec. 116(h) of WIOA and explains that the Governor is not required, but is allowed to use non-Federal funds to create incentives for Local Boards to implement pay-for-performance contract strategies for the delivery of training services described in sec. 134(c)(3) and sec. 129(c)(2) of WIOA in the local areas served by the Local Boards.

Proposed § 677.215(b) maintains that pay-for-performance contract strategies must be implemented in accordance with 20 CFR 683.500 through 683.530 and § 677.160.

§ 677.220 Under what circumstances may a corrective action or sanction be applied to local areas for poor performance?

Proposed § 677.220(a) explains the circumstances under which local areas must receive technical assistance under WIOA sec. 116(g) for failure to meet levels of performance. In accordance with WIOA, the proposed rule would require that local areas must receive technical assistance and may be subject to a performance improvement plan for failure to achieve adjusted levels of performance established with the State for primary performance indicators in the adult, dislocated worker, or youth programs authorized under title I of WIOA in any PY. The Governor, or his/her designee, or upon request of the Governor, the Secretary of Labor, must provide technical assistance, which may include assistance in the development of a performance improvement plan or a modified local or regional plan, to the local area in the first year of failure to meet levels on the required performance indicators. In requesting assistance from the

Secretary of Labor, the Governor's request should include the factors that impede the provision of successful technical assistance at the State level, because the State is generally in the best position to address failure to meet the performance levels it negotiated with the local area. The Departments further clarify that a State must establish the threshold for failure for a local area to meet levels of performance prior to negotiating local area adjusted levels of performance. A local area cannot accurately negotiate adjusted levels of performance without having an understanding of what the State will consider failure.

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

§ 677.225 Under what circumstances may local areas appeal a reorganization plan?

Proposed § 677.225 implements sec.116 (g)(2)(B) of WIOA and outlines when a local area and CEO may appeal a reorganization plan executed by the Governor.

Proposed § 677.225(a) explains that the Local Board and CEO for a local area subject to a reorganization plan under WIOA sec. 116(g)(2)(A) may appeal to the Governor to rescind or revise a reorganization plan no later than 30 days after receiving notice of the reorganization plan. The Governor must make a final decision 30 days after receipt of an appeal.

Proposed § 677.225(b) implements the statutory requirement that if the Local Board and CEO wish to appeal the final decision of the Governor, they must make an appeal to the

Secretary of Labor no later than 30 days after receiving the final decision from the Governor. The Departments propose to require that any appeal to the Governor under proposed § 677.225(a) or the Secretary of Labor under proposed § 677.225(b) must be submitted jointly by the Local Board and the CEO. The Departments propose this interpretation because the statute uses the conjunctive "and" in stating that the Local Board and the CEO may appeal. In addition, this interpretation has the benefit of requiring review only in circumstances where the Local Board and CEO are in agreement that the reorganization plan should be appealed and will conserve government resources in cases where either the Local Board or CEO agrees with the Governor's decision. This approach also avoids duplication and inefficiency that would be engendered by providing an opportunity for the Local Board and the CEO to appeal separately.

Proposed §§ 677.225(c)-(d) implement statutory requirements that the Secretary must make a final decision regarding an appeal within 30 days of receipt of the appeal and that a reorganization decision made by the Governor is effective at the time it is issued and remains in effect unless and until such time that the Secretary of Labor rescinds or revises the reorganization plan on appeal.

6. Subpart E—Eligible Training Provider Performance for Workforce Innovation and Opportunity Act Title I Programs

§ 677.230 What information is required for the eligible training provider performance reports?

Proposed § 677.230 implements the requirements of sec. 116(d)(4) of WIOA, which requires annual ETP performance reports. The ETP performance reports provide critical information, including the employment, earnings, and credentials obtained by individuals in the programs of study eligible to receive funding under the adult and dislocated worker formula

programs under title I-B of WIOA. This information will be of significant benefit in assisting WIOA participants and members of the general public in identifying effective training programs and providers. The information will also benefit providers by widely disseminating information about their programs and potentially as a tool to enhance their programs.

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

This proposed regulation, in conjunction with proposed § 680.400 through 680.530, establishes the minimum requirements for performance information to be provided in the ETP performance reports.

Proposed § 677.230(a) requires that States make publicly available and publish in the standard template disseminated by the Departments under ETP performance reports under WIOA sec. 116(d)(4), including by electronic means, the ETP reports for those ETPs who provide services under sec. 122 of WIOA, which is further discussed in 20 CFR 680.500.

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

Proposed § 677.230(a)(1) outlines the minimum participant performance information that is required to be made available under the statutory provisions in sec. 116(d)(4) of WIOA. ETP

performance reports must include performance information on the total number of participants who receive training services under the adult and dislocated worker programs of WIOA title I for the most recent PY of performance as well as the three preceding PYs. The ETP reports must provide disaggregated counts of participants in the adult and dislocated worker programs with respect to barriers to employment, age, sex, and race and ethnicity.

Additionally, the ETP performance reports must include counts of participants disaggregated by type of training entity for the adult and dislocated worker programs for the most recent PY and three preceding PYs. The Departments interpret this requirement to be applicable only in prospective years; this would not apply retroactively and would not require ETPs to provide information for these reports in years prior to being established as an ETP in the performance reports. Any data provided for initial eligibility determinations should be done consistent with established parameters under 20 CFR part 680, subpart E.

Proposed § 677.230(a)(2) outlines the minimum exit-based performance information that is required to be made available under the statutory provisions in sec. 116(d)(4) of WIOA. At a minimum, the ETP performance reports must contain the number of participants who exit from a program of study, and the total number of participants who exited, disaggregated by type of training entity for a PY and the three preceding PYs.

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

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

Proposed § 677.230(a)(4) provides that the ETP performance reports contain information on the total number of individuals exiting from a program of study (or its equivalent). This includes all students in a program of study and is not limited to those students who are WIOA participants. Including all students provides significantly better information on the effectiveness of a program of study.

Proposed § 677.230(a)(5) reiterates the statutory requirements for outcome information on all students in a program of study with regard to the primary indicators of performance (as identified in clauses (I)-(IV), sec. 116(b)(2)(A)(i) of WIOA, and §§ 677.155(a)(1)(i)-(iv)).

Proposed § 677.230(b) is consistent with 20 CFR 680.470 and provides that registered apprenticeship programs need not submit performance information. Under this proposal, if a registered apprenticeship program voluntarily submits this information, it must be part of the report as with any other training provider.

Proposed § 677.230(c) requires the State to provide electronic access to the eligible training provide performance report as part of its annual State performance report. The Departments propose this requirement because while WIOA sec. 116(d)(6)(B) requires the State to make the ETP performance report available, sec. 116(d)(6)(D) requires the Secretaries to summarize and disseminate these reports to Congress. The proposal will enable the Departments to fulfill this statutory requirement.

Proposed § 677.230(d) requires States to follow reporting guidance to be issued that will explain and clarify procedures governing this section.

Proposed § 677.230(e) establishes that a Governor may designate one or more State agencies or appropriate State entities, such as a State education agency or State educational authority, to assist in overseeing the ETP performance and facilitating the production and dissemination of ETP performance reports. These agencies may be the same agencies that are designated responsible for administering the ETP list as provided for in § 680.210. The designated State agency or entity is responsible for data matching required to produce the ETP reports using quarterly wage data, creating and disseminating the reports, and coordinating the dissemination of the performance reports with the ETP list as provided in § 680.210

Proposed § 677.230(e)(1) establishes that the designated agency would be responsible for the facilitating the data matches necessary to develop and compile the ETP performance reports. This proposed regulation seeks to provide a foundation for data matching for the purposes of these reports to allow States more opportunities to establish the necessary connections and procedures that are in compliance with the existing regulations governing education data governed by the Family Educational Rights and Privacy Act (FERPA) and the UI wage data governed by State law and UI Confidentiality Regulations found in 20 CFR part 603.

Proposed § 677.230(e)(2) establishes that the designated State agency or State entity responsible for these reports would carry the responsibility for the creation and dissemination requirements found in this subsection. The Departments recognize that the ETP performance reports are a departure from the previous reporting mechanisms related to ETPs as they existed under WIA. The Departments are seeking comment on specific aspects of this new performance reporting requirement as it relates to reporting burden for training providers under this requirement. The Departments are interested in comments on ways the Departments may reduce this burden for training providers as well as how the Departments may leverage this performance

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

Proposed § 677.230(e)(3) establishes the designated State agency or State entity as responsible for coordinating the dissemination of the ETP performance reports with the dissemination of the ETP list. WIOA sec. 122 establishes the ETP list as a key resource in the State one-stop system and requires it to be available to individuals seeking information on training programs as well as participants receiving career services funded under WIOA and other programs. DOL considers the ETP reports to also be a key component of consumer choice.

The Departments propose that the ETP performance report be disseminated in coordination with the dissemination of the ETP list and the information that is required to accompany that list under § 680.500. This coordination requirement is consistent with the statutory emphasis on consumer choice and performance accountability.

7. Subpart F—Performance Reporting Administrative Requirements

§ 677.235 What are the reporting requirements for individual records for core Workforce Innovation and Opportunity Act title I, III, and IV programs?

Proposed § 677.235 outlines the requirements for core WIOA title I, III and IV programs for the collection and submission of individual records.

Proposed § 677.235(a) requires that States submit individual records containing demographic information, information on services received, and information on resulting outcomes for individuals served by specific programs to be submitted by programs to their appropriate Secretary on a quarterly basis. At the time of WIOA's enactment, DOL already

required the submission of standardized individual records for the adult, dislocated worker and youth programs, and programs authorized under the Wagner-Peyser Act. Similarly, ED required the submission of individual-level data from case service records for the Vocational Rehabilitation program.

DOL began requiring States to submit quarterly individual records, in part, to ensure the information submitted in States' annual reports as required by WIA were accurate. These quarterly reports also helped DOL identify States that needed early intervention to provide assistance if they are not meeting their performance goals. The DOL interpreted several provisions of WIA as authorizing the collection of these reports. Specifically, WIA sec. 136 required DOL to measure States' progress, WIA sec. 172 required DOL to evaluate the activities of its programs, and WIA sec. 189 required DOL to submit an annual report to Congress on WIA title I programs. Additionally, WIA sec. 185 required States to maintain records sufficient to prepare performance reports. Considered as a whole, these statutory provisions authorized DOL to require States submit these reports.

ED has collected individual-level data regarding all individuals served by the Vocational Rehabilitation program, whose case service records were closed, in order to satisfy data collection requirements and to ensure States' compliance with programmatic requirements under WIA and the Rehabilitation Act of 1973. ED has historically collected this data, via the Case Service Report (RSA-911), for open cases as well as closed cases, annually, but proposes to start collecting this data on a quarterly basis to satisfy requirements imposed by WIOA.

Section 13 of the Rehabilitation Act requires ED to collect and report information required by WIOA sec. 101(a)(10) to Congress and to the President in the Annual Report. Section 14 of the Rehabilitation Act requires ED to conduct evaluations of the VR program. The

information from this data collection is used in these evaluations. Section 106 of the Rehabilitation Act requires each State to report to ED the extent to which each State is in compliance with standards and indicators. Section 107 of the Act requires an annual review and periodic onsite monitoring of States' performance, much of which is determined on the basis of this data collection activity. RSA-911 data are also needed to satisfy the requirements of sec. 131 of the Rehabilitation Act, which requires an exchange of data between RSA, the Social Security Administration (SSA), and DOL.

Sections 116, 169, and 185 of WIOA retain similar requirements to the WIA provisions the Departments relied on to require these reports. Additionally, WIOA's increased focus on performance accountability and requirement that the Departments sanction failing States, give the Departments authority to require these reports.

Proposed § 677.235(b) requires the individual records be submitted in one record that is integrated across all core DOL programs. The proposal would require that the individual records submitted by States be standardized in terms of data elements and associated reporting specifications. Currently quarterly individual records are program-specific and not part of an integrated performance reporting system. For DOL programs, States are required to provide two separate individual records for an individual receiving services under WIA and Wagner-Peyser. This duplication increases the reporting burden on States and treats these programs separately rather than as parts of a holistic, integrated system designed to efficiently provide necessary employment and training services to an individual.

Furthermore, sec. 504 of WIOA requires DOL and ED to reduce reporting burden and simplify reporting requirements. A single integrated individual record best meets these needs.

Requiring a single, integrated record will eliminate duplicative reporting of an individual's demographic information across programs.

At the time of enactment, the Workforce Investment Streamlined Performance Reporting (WISPR) system is the most integrated individual record layout utilized in workforce development programs administered by DOL. The WISPR includes programmatic and performance reporting across programs authorized under WIA (adult, dislocated worker, and youth), Wagner-Peyser, the Trade Act, and the Jobs for Veterans State Grant programs administered by DOL's Veterans' Employment and Training Service (VETS). This new regulation proposes an integrated, individual record that is similar to the WISPR approach for core programs administered by DOL, which supports system alignment, as well as reduced reporting burden as required under sec. 504 of WIOA. The Departments are working towards establishing reporting templates for the required performance reports and individual record formats that States will be required to use in order to meet these reporting requirements.

Proposed § 677.235(c) explains that associated reporting instructions are proposed to be provided through policy guidance.

§ 677.240 What are the requirements for data validation of State annual performance reports?

Proposed § 677.240 implements sec. 116(d)(5) of WIOA, which requires States to establish procedures, consistent with DOL and ED guidelines to provide that the information in the States' annual performance reports are valid and reliable. Therefore, the Departments propose to add § 677.240, which requires States to submit valid and reliable annual State performance reports and associated individual record information consistent with requirements that the Secretaries of Labor and Education will explain through guidance. To ensure States are

meeting this statutory requirement, the Departments propose that if a State fails to achieve the accuracy standards, the Secretary of Labor or Education may require the State to develop and implement corrective actions, which may require the State to provide training for its subrecipients. These proposed requirements are separate from the corrective actions provided under § 677.185 and § 677.220. The Departments are committed to providing that States have the information needed to effectively validate data and propose that the Departments will provide training and technical assistance about these requirements.

C. Description of the One-Stop System Under Title I of the Workforce Innovation and Opportunity Act (20 CFR Part 678; 34 CFR Part 361, Subpart F; 34 CFR Part 463, Subpart J)

1. Introduction

In the section-by-section discussions of each proposed one-stop provision below, the heading references the proposed DOL CFR part and section number. However, the Department of Education proposes in this joint NPRM identical provisions at 34 CFR part 361, subpart F (under its State Vocational Rehabilitation Services Program regulations) and at 34 CFR part 463, subpart J (under a new CFR part for AEFLA regulations). For purposes of brevity, the section-by-section discussions for each Department's provisions appear only once—in conjunction with the DOL section number—and constitute the Departments' collective explanation and rationale for each proposed provision.

2. Subpart A—General Description of the One-Stop Delivery System

The WIOA reaffirms the role of the one-stop system, a cornerstone of the public workforce development system, and subpart A describes the one-stop delivery system. Although there are many similarities to the system established under the WIA, there are also significant

changes under WIOA. This subpart, therefore, restates WIA requirements governing one-stop centers, to the extent they are still applicable under WIOA, and embodies a set of reforms that, when implemented effectively, are intended to make significant improvements to the public workforce delivery system. These proposed regulations would establish requirements of the one-stop career center system as defined under WIOA, requiring partners to collaborate to support a seamless customer-focused service delivery network. The proposed regulations would require that programs and providers collocate, coordinate, and integrate activities and information, so that the system as a whole is cohesive and accessible for individuals and businesses alike. The ultimate goal is to increase the long-term employment outcomes for individuals seeking services, especially those with significant barriers to employment, and to improve services to employers.

Proposed subpart A describes the one-stop center system established under WIOA. It establishes the different types of one-stop career centers allowable in each local area, and addresses the use of technology to provide services through the one-stop delivery system. As discussed in §§ 678.305 and 678.310, a local area's one-stop delivery system may be made up of a combination of a comprehensive one-stop center and a network of affiliated sites. When designing the one-stop delivery system, States and Local Boards must ensure that information on the availability of career services is available at all one-stop physical locations and access points, including electronic access points, regardless of where individuals initially enter the local one-stop system.

§ 678.300 What is the one-stop delivery system?

Proposed § 678.300(a) describes the requirements of the one-stop delivery system and the purpose. The one-stop delivery system brings together a series of partner programs and entities responsible for workforce development, educational, and other human resource programs to

collaborate in the creation of a seamless customer-focused service delivery network that enhances access to the programs' services. Partners, programs, and providers will collocate, coordinate, and integrate activities so that individuals seeking assistance will have access to information and services that lead to positive employment outcomes for individuals seeking services.

Proposed § 678.300(b) provides that there are responsibilities at the local, State and Federal levels relative to the establishment and maintenance of the one-stop delivery system.

Proposed § 678.300(c) retains the same requirement found under WIA at 20 CFR 662.100(c) that there be at least one physical one-stop career center in each local area. Proposed § 678.300(d) allows for the establishment of additional affiliate locations including specialized centers serving targeted participant populations, such as youth or dislocated workers, or industry sector specific centers.

Proposed § 678.300(e) states that required one-stop partners must provide electronic access to programs, activities, and services by electronic means, in addition to providing access to the services at a comprehensive one-stop center or making the program services available at an affiliated site if the partner is participating at the affiliated site. Services provided through electronic means would need to supplement and not supplant those provided through the physical one-stop delivery system. The phrase “electronic means” includes Web sites, social media, internet chat features, and telephone.

Proposed § 678.300(f) requires that the description of the one-stop delivery system be included in the Memorandum of Understanding (MOU) required at proposed 20 CFR 678.500.

§ 678.305 What is a comprehensive one-stop center and what must be provided there?

Proposed § 678.305 requires that there be a comprehensive one-stop career center in each local area. Although the requirement to have at least one physical center in each local area is unchanged from the requirement under WIA, and the requirement is more fully described under these proposed regulations.

Proposed § 678.305(a) establishes that the comprehensive one-stop center is a physical location where individuals must have access to a specific set of services that must be made available to individuals seeking services. The required services are listed in proposed § 678.305(b) and the proposed rule defines "access" in § 678.305(d). Customers can access a specific program without that program's staff being physically present at a one-stop center. However, in order to ensure that comprehensive one-stop centers are not all virtual services, the Departments propose that WIOA title I staff be physically present in the one-stop. There may be creative ways to provide all virtual services to customers, but such an all-virtual site would not be considered a comprehensive one-stop center. This proposed physical presence requirement does not have to be met by a full-time staff person, and can be met by the physical presence of different staff trading off throughout regular business hours (e.g., job-sharing or shift work).

Proposed § 678.305(c) provides that individuals must have access to the required services under § 678.305(b) on regular business days, at a minimum, at the comprehensive center. This is a more specific requirement than exists under WIA. If, for example, the comprehensive one-stop center is open Monday through Friday, customers must have access to the services listed at § 678.305(b) Monday through Friday. The Departments strongly encourage Local Boards to find creative ways to expand the hours that services are available to customers, to ensure that services are universally accessible to people with various working hours, different access to transportation, and different family care arrangements. For example, Local Boards should

consider ways to make services available to job seekers who might have childcare responsibilities or work during the normal business day. State Boards must consider service hours when evaluating effectiveness of one-stop centers, as part of the one-stop certification process described further in § 678.800(b).

Proposed § 678.305(d) defines the access to services that must be available to individuals seeking assistance at the comprehensive one-stop. This access can be provided in one of three variations of physically present staff or through technology: (1) program staff physically present at the location; (2) staff physically present at the one-stop from any partner program appropriately trained to provide information to customers about the programs, services, and activities available through partner programs, such as the types of services that program provides and whether the services might meet the individual's needs; or (3) providing direct linkage through technology to someone who can either provide the program services, or provide information such as how to apply for the program, or how to begin receiving services. Under the proposed rule, if there is access to technological direct linkages (as defined in § 678.305(d)(1)) at a comprehensive one-stop center for a specific program, no partner program staff must be physically present.

Proposed §§ 678.305(d)(1) and (2) provide that services provided through technology must be meaningful, available in a timely manner and not simply a referral to additional services at a later date or time.

Proposed § 678.305(e) requires that all comprehensive one-stop career centers be physically and programmatically accessible to individuals with disabilities.

§ 678.310 What is an affiliated site and what must be provided there?

In addition to the proposed requirement for a physical center in each local area where required one-stop partners must provide access to their programs, services and activities, proposed § 678.310 provides that the one-stop delivery system may also provide programs, services, and activities through affiliated sites or through a network of eligible one-stop partners that provide at least one or more of the programs, services, and activities at a physical location or through an electronically or technologically linked access point, such as a library.

Proposed § 678.310(a) defines an affiliated site as a location that makes available one or more of the required or optional programs, services, and activities to individuals. The proposed rule is not intended to establish a new physical presence requirement for one-stop partner programs in affiliated sites. Physical presence at affiliated sites can be negotiated at the local level by partner programs and the Local Board, and may be under 50 percent for any individual partner program, except in those cases described in proposed § 678.315(b).

Proposed § 678.310(b) sets forth the prohibition against standalone Wagner-Peyser employment service centers, described more fully in proposed § 678.315.
Section 121(e)(3) of WIOA, which requires colocation of Wagner-Peyser employment services, is effective on July 1, 2015. However, proposed § 678.310(c) recognizes that States will need a reasonable amount of time to fully integrate the delivery of employment services into the one-stop system. Real property issues, decisions on site locations, discussions with municipal or county governments, and development of agreements with partners to participate at both comprehensive and affiliated sites may require some time. Nevertheless, a State in such circumstances must be prepared to provide DOL with a plan that details the steps the State will take to achieve colocation of Wagner-Peyser employment services as described in proposed

§ 678.315, and a timetable showing how the State will achieve colocation of Wagner-Peyser services within a reasonable time. The Departments are aware that States may also be considering how best to integrate other partner programs and may be considering the colocation of other programs as well. In its plan for achieving Wagner-Peyser employment services colocation, the State may wish to include how it will collocate other programs too, but this is not required. DOL may request the plan for achieving Wagner-Peyser employment services colocation during monitoring and other oversight activities. DOL's ETA will provide guidance on the approach it will use to obtain the plan and timeline from States.

Proposed § 678.310(d) requires that all affiliate one-stop centers be physically and programmatically accessible to individuals with disabilities, as described in proposed § 678.800.

§ 678.315 Can a stand-alone Wagner-Peyser employment service office be designated as an affiliated one-stop site?

Proposed § 678.315 sets forth the prohibition against standalone Wagner-Peyser employment services offices, to implement WIOA's amendment to the Wagner-Peyser Act that requires Wagner-Peyser employment services to be collocated with one-stop centers. Wagner-Peyser employment services cannot, by themselves, constitute an affiliated one-stop center. In those cases where Wagner-Peyser employment services are located in an affiliated site, there must be at least one other partner in that affiliated site whose staff is physically present more than 50 percent of the time the center is open. Certain partner programs cannot be considered the "other partner" when determining whether Wagner-Peyser employment services are stand-alone; these are: local veterans' employment representatives, disabled veterans' outreach program specialists, or unemployment compensation (UC) staff. Local veterans' employment representatives, disabled veterans' outreach program specialists, also referred to collectively as

JVSG programs, are typically provided alongside Wagner-Peyser employment services programs. When a veteran does not receive services through the disabled veterans' outreach program, that veteran is served by the Wagner-Peyser employment service. To provide individuals with the full range of employment, training, and education services available, it is important to connect both the JVSG programs and the Wagner-Peyser employment service with the rest of the one-stop system. The Departments expect that the entity that administers the Wagner-Peyser employment service, in consultation with Local Boards and one-stop partners, will need to make the changes needed to comply with the proposed rule. The proposed rule is not intended to establish a new physical presence requirement for individual one-stop partner programs in affiliated sites. The proposed rule is meant to trigger adjustments on where Wagner-Peyser employment services are delivered. The Departments are aware that some one-stop partner programs are unable to have a physical presence in every affiliated site. Partner programs and the Local Board can negotiate physical presence at affiliated sites, and this presence may be below 50 percent for any one partner program. The Departments seek feedback, particularly from workforce programs outside WIOA title I and III, on whether the proposed requirement that other partners be present more than 50 percent of the time creates an impediment to participating in the one-stop system, and whether any other changes would facilitate colocation.

§ 678.320 Are there any requirements for networks of eligible one-stop partners or specialized centers?

Proposed § 678.320 explains the requirements for the networks of one-stop partners and specialized centers named in the statute. These entities were not listed in WIA but were included as part of the one-stop system in the WIA regulations. An example of a specialized center is one

targeted for youth, one geared at a specific industry sector, or one established specifically to respond to a large localized layoff. These specialized centers do not need to provide access to every required partner, but must have a way to make referrals to one-stop partners in comprehensive and affiliate centers. The specialized centers should also follow-up to make sure that services were provided after referral. A Local Board can design the specialized center to meet local needs. A specialized center must not be a standalone Wagner-Peyser employment service office. The requirements of proposed § 678.315(b) apply to specialized centers just as they apply to affiliated sites.

3. Subpart B— One-Stop Partners and the Responsibilities of Partners

The public workforce system envisioned by WIOA seeks to provide all participants with access to high-quality one-stop centers that connect them with the full range of services available in their communities, whether they are looking to find jobs, build basic educational or occupational skills, earn a post-secondary certificate or degree, get guidance on how to chart careers, or are employers seeking skilled workers. A true seamless, one-stop experience requires strong partnerships across programs that are able to streamline service delivery and align program requirements. In this subpart of the proposed rule, the Departments describe requirements relating to such one-stop partnerships. Specifically, this subpart identifies the programs that are required partners, the other entities that may serve as partners, the roles and responsibilities of required partners, and the types of services provided.

§ 678.400 Who are the required one-stop partners?

Proposed §§ 678.400(a)-(b) lists the required partners under WIOA. Beyond the partners previously required under WIA, WIOA adds the Temporary Assistance for Needy Families

(TANF) program and the Ex-Offender program administered by DOL under sec. 212 of the Second Chance Act of 2007 to the list of required partners.

§ 678.405 Is Temporary Assistance for Needy Families a required one-stop partner?

Proposed § 678.405(a) clarifies that TANF is a required partner. Proposed § 678.405(b) provides further clarification that the Governor may determine that TANF will not be a required partner in a local area(s) but must notify the Secretaries of Labor and Health and Human Services in writing of this determination. This implements sec. 121(b)(1)(C) of WIOA. Proposed § 678.405(c) clarifies that TANF may always partner or collaborate with the one-stop, even if the Governor has determined it is not a required partner in that State or local area.

§ 678.410 What other entities may serve as one-stop partners?

Partnerships across programs are critical to supporting the one-stop vision for service delivery. Proposed § 678.410(a) reinforces the sec. 121(b)(2)(B)(vii) of WIOA, which states that other Federal, State, local, or private sector entities that carry out workforce development programs may serve as additional one-stop partners if the Local Board and CEOs approve. Proposed § 678.410(b) provides a list of possible additional partners. In addition to the optional partners listed, Local Boards may partner with a wide range of organizations, including but not limited to CBOs, non-profit community action agencies, disability service providers, nonprofit workforce providers, and nonprofit English-as-a-second-language (ESL) providers.

In contrast to the former WIA requirement, the proposed rule does not contain an allowance for the State to require that optional partners be included as a partner in all of the local one-stop delivery systems in the State. This omission reflects the WIOA requirement that the Local Board determine partners in the one-stop and that the State cannot mandate partners other than those specifically required in WIOA. This change places greater discretion at the local level

in identifying the appropriate mix of services provided and the Departments expect that such decisions will be based on local or regional labor market information and population demographics.

§ 678.415 What entity serves as the one-stop partner for a particular program in the local area?

The proposed regulation at § 678.415 provides a general definition of the ‘‘entity’’ that carries out the programs identified in §§ 678.400 and 678.410 and serves as the one-stop partner. The regulation defines the entity as the grant recipient or other entity or organization responsible for administering the program’s funds in the local area. The term ‘‘entity” does not include service providers that contract with or are sub recipients of the local entity. The proposed regulation notes that for programs that do not have local administrative entities, the responsible State agency may be the one-stop partner. In addition, the proposed regulation specifies the appropriate entity to serve as partner for the Adult Education and Vocational Rehabilitation (AEFLA) program, WIOA national programs, and the Carl D. Perkins Career and Technical Education (Perkins) program is the State eligible agency. Further, a State eligible agency for the AEFLA or Perkins programs may delegate its responsibilities to act as a local one-stop partner to one or more State agencies (for the Perkins program only), local entities, or consortia of local entities, as specified in the proposed regulation. In making such a delegation, a State eligible agency would have to meet all Federal and State requirements applicable to such delegations.

§ 678.420 What are the roles and responsibilities of the required one-stop partners?

Proposed § 678.420 describes and elaborates upon the statutory responsibilities of the one-stop partners. These responsibilities and corresponding WIOA provisions are identified and summarized in paragraphs (a) through (e). Jointly funding services is a necessary foundation for

an integrated service delivery system. 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. The proposed requirement in § 678.420(e), to provide representation on State and Local Workforce Development Boards, is new in WIOA and only required of core programs; WIA only required one-stop partner representation on Local Boards, and required it for all one-stop partner programs.

§ 678.425 What are the applicable career services that must be provided through the one-stop delivery system by required one-stop partners?

§ 678.430 What are career services?

WIOA requires one-stop partners to deliver career services applicable to their specific program. This proposed regulation clarifies that an applicable career service is a service identified in § 678.430 and is an authorized program activity. The TANF statute does not include a definition for career services. Accordingly, the TANF State grantees need to identify any employment services and related supports being provided by the TANF program (within the particular local area) that are comparable with the career services as described in proposed § 678.430. At a minimum, the TANF program partner must provide intake services at the one-stop for TANF assistance and non-assistance benefits via application processing and initial eligibility determinations. These latter services comport with proposed § 678.420. The Departments seek specific comments about our proposal regarding the identification and inclusion of TANF employment, related support services and TANF intake functions as "career services," that are required to be provided locally in one-stop centers. Other program specific

information about the applicability of various career services is provided where needed in subsequent sections of this proposed rule. Proposed § 678.425 repeats the WIOA prohibition on one-stop partners requiring a particular sequence of services. Seamless service delivery, which is one of the underlying principles of the one-stop system, requires that appropriate services be made available to individuals based on their needs, and that multiple services can be provided simultaneously.

Career services are identified in sec. 134(c)(2) of WIOA. In addition to replacing core and intensive services as they were described in WIA, a number of new activities are included in the definition of "career services." This section organizes WIOA careers services into three categories: (1) career services that must be made available to all participants; (2) career services that must be made available if deemed appropriate and needed for an individual to obtain or retain employment; and (3) follow-up activities. The proposed regulation respectively designates these categories as: basic career services; individualized career services; and follow-up services. The activities included under these categories are identified in §§ 678.430(a), 678.430(b), and 678.430(c), respectively.

The proposed regulation reiterates the list of services included in the statute, and elaborates on some of the career services. Section 134(c)(2)(A)(x) of WIOA requires as a career service the provision of both information and assistance to customers regarding filing an UI claim. The proposed regulation at § 678.430(a)(10) further provides that such assistance must be meaningful and provided by staff who are well trained in UC claims. This proposed paragraph reflects the Departments' interpretation that the one-stop system established by WIOA is intended to provide participants with a seamless, one-stop experience that includes a professional level of service provided in a timely manner. Specifically, the Departments have concluded that

individuals directly seeking career services from the one-stop system should receive more robust or "meaningful" service beyond what they could obtain on their own using self-service tools, such as public Web sites and phone numbers; instead, the Departments intend for them to receive meaningful staff assisted services if needed. In the context of providing assistance with UI claims, the proposed rule defines "meaningful assistance" as having staff well-trained in UC claims filing and the rights and responsibility of claimants available in the one-stop centers to provide customers with assistance in filing a claim if they request it or are identified as needing the service due to barriers such as limited English proficiency or disabilities. This staff can be UI staff placed in the one-stop or Wagner-Peyser or other one-stop partner staff who have been properly cross-trained to provide this service. Alternatively, meaningful assistance can also be provided by phone or by means of other technology, including computer access, as long as the assistance is provided by specifically identified staff and within a reasonable time. This means that if the customer is referred to a phone for UI claims assistance, it must be a phone line dedicated to serving one-stop customers. It cannot be simply placing the customer into the general State UI agency contact center's phone queue. If the assistance is provided remotely using technology, it must be a technology that enables trained staff to provide the assistance. Examples of technology that enables remote assistance include live Web chat applications, video conference applications, or other similar technology. In addition to UI program funding, adult and dislocated worker funds may be used for these services as allowed in WIOA sec. 134(c)(2)(A)(x); Wagner-Peyser funds may be used for the provision of these services as allowed sec. 7(a)(3)(F) of the Wagner-Peyser Act; or some combination of these three funding sources. It is important to acknowledge that the vast majority of UI claims filing will continue to be done remotely through self-service options. This proposed regulation does not require that

States actively promote in-person claims filing through the one-stop centers. It does mean that assistance must be made available to customers who come to the one-stop for assistance in filing a UI claim and to customers that have been identified as having barriers to filing a UI claim without assistance.

§ 678.435 What are the business services provided through the one-stop delivery system, and how are they provided?

The one-stop system is intended to serve both job seekers and businesses. Similar to job seekers, businesses should have access to a truly one-stop experience in which high quality and professional services are provided across partner programs in a seamless manner. Labor markets are typically regional, but programs often design service delivery strategies around State and local geographic boundaries. Effective business services must be developed in a manner that supports engagement of employers of all sizes in the context of both regional and local economies, but should avoid burdening employers, for example with multiple uncoordinated points of contact. Proposed § 678.435(a) lists required business services. Proposed § 678.435(b) States that local areas have flexibility to provide services that meet the needs of area businesses and must carry out these activities in accordance with relevant statutory provisions.

Section 134(d)(1)(A)(ix)(I) of WIOA provides additional flexibility to allow business-focused activities to be carried out by business intermediaries working in conjunction with the Local Board. Such activities can also be carried out through the use of economic development, philanthropic, and other public and private resources in a manner determined by the Local Board and in cooperation with the State. Proposed § 678.435(b) reiterates this flexibility.

Proposed § 678.435(c) provides a non-exhaustive list of allowable business activities. In addition to traditional employer services, such as customized screening and referral of

candidates, this list includes activities specifically identified in sec. 134(d)(1)(A) of WIOA that demonstrate WIOA's emphasis on innovative and regional strategies, such as regional labor market information, sector strategies, and development of career pathways. This list reflects activities specifically identified in WIOA and activities the Department had previously identified in administrative guidance under WIA. Proposed § 678.435(d) states that business services and strategies must be reflected in the local plan.

§ 678.440 When may a fee be charged for the business services in 20 CFR 678.435?

Section 134(d)(1)(A)(ii) of WIOA allows customized employer-related services to be provided on a fee-for-service basis. Proposed § 678.440 clarifies that there is no requirement that a fee-for-service be charged to employers. However, the Local Workforce Development Boards should examine available resources and assets to determine an appropriate cost structure. They may also provide such services for no fee.

WIOA seeks to create a seamless service delivery system by linking and aligning one-stop partners. However, as described in § 678.425(a), eligibility and other requirements of one-stop partner programs continue to apply. Proposed § 678.425(b) clarifies that resources of each partner may only be used to provide authorized services to eligible individuals. It also clarifies that seamless service delivery can still be provided through joint funding of shared services based on the relative benefit received by each program. For example, one-stop staff conducting intake for all programs could be a shared cost. Joint funding must be in compliance with Federal cost principles.

4. Subpart C— Memorandum of Understanding for the One-Stop Delivery System

This subpart describes the requirements for the MOU between the Local Board, CEO, and the one-stop partners relating to the operation of the one-stop delivery system in the local area. The Local Board acts as the convener of MOU negotiations and shaper of how local one-stop services are delivered.

§ 678.500 What is the Memorandum of Understanding for the one-stop delivery system and what must be included in the Memorandum of Understanding?

Proposed § 678.500 describes what must be included in the MOU executed between the Local Board, with the agreement of the CEO, and the one-stop partners relating to the operation of the one-stop delivery system in the local area. Proposed § 678.500(a) establishes that two or more local areas in a region may develop a single joint MOU when the areas submit a regional plan. The Departments encourage regional planning, and allowing joint MOUs to support regional planning, particularly where local areas have the same one-stop operator, are providing business services at a regional level, or have planned other joint activities typically discussed in an MOU.

The MOU must include the provisions described in paragraphs (b) through (e) of the section, consistent with WIOA sec. 121(c)(2). As stated in proposed § 678.500(b), the MOU must include the final plan, or an interim plan if needed, on how the costs of the services and the operating costs of the one-stop system will be funded. Shared operating costs may include shared costs of the Local Board, as stated in proposed § 678.760. The MOU must also contain all of the information about infrastructure costs listed in proposed § 678.755. When fully executed, the MOU must contain the signatures of the Local Board, one-stop partners, the

CEO(s), and the period in which the agreement is effective, and the MOU must be periodically updated to reflect any changes in the signatories or one-stop infrastructure funding. Signatures to the MOU indicate that the MOU has been executed. A lack of signatures for the MOU means that the Local Board has not established an MOU.

§ 678.505 Is there a single Memorandum of Understanding for the local area, or must there be separate Memoranda of Understanding between the Local Board and each partner?

Proposed § 678.505 establishes that a Local Board and one-stop partners may develop a single "umbrella" MOU that applies to all partners, or develop separate agreements between the Local Board and each partner or groups of partners. Under either approach, the MOU requirements described in § 678.500 apply. The Departments encourage States and local areas to use "umbrella" MOUs to facilitate transparent, flexible agreements that are not burdensome, so that partners may focus upon service delivery.

§ 678.510 How should the Memorandum of Understanding be negotiated?

Proposed § 678.510 describes the collaborative and good-faith approach Local Boards and partners are expected to use to negotiate MOUs. "Good faith" may include fully and repeatedly engaging partners, transparently sharing information, and maintaining a shared focus on the needs of the customer. Proposed § 678.510(a) allows Local Boards, CEOs, and partners to request assistance from a State agency responsible for the program, the Governor, State Board, or other appropriate parties when negotiating the MOU. Proposed § 678.510(b) describes options for including the infrastructure cost plans in the MOU; the MOU may include an interim infrastructure funding plan in the MOU, as described in proposed § 678.715(c). This may be particularly needed if the local area uses the State infrastructure cost funding mechanism, as described in proposed § 678.730, to enable the local area to move forward with implementing

one-stop service delivery in areas where there is agreement. The MOU must be amended once a final infrastructure cost plan is determined. Proposed § 678.510(c) describes how to address MOU impasses. Consistent with WIA regulations, any local area in which a Local Board has failed to execute an MOU with all of the required partners is not eligible for State incentive grants and these sanctions are in addition to, not in lieu of, any other remedies that may be applicable to the Local Board or to each partner for failure to comply with any statutory requirements.

5. Subpart D—One-Stop Operators

This proposed subpart addresses the role and selection of one-stop operators. Unlike the other subparts in this proposed rule, this subpart is administered primarily by DOL. The DOL and ED agreed that the subpart should remain in this part of the Joint Rule, so that all of the subparts having to do with one-stop requirements are together. However, unlike the rest of this proposed part, this portion of the preamble refers mainly to DOL.

Under WIA, one-stop operators could be designated or certified through a competitive process, or they could be "grandfathered" in from JTPA. Section 121(d)(2)(A) of WIOA only allows for selection of a one-stop operator through a competitive process. This proposed regulation uses the term "selection" of one-stop operator through a competitive process, rather than "designation" or "certification" to avoid confusion. The competitive process established by this proposed subpart requires States to follow the same policies and procedures they use for procurement from non-Federal funds. All other non-Federal entities, including subrecipients of a State (such as local areas), are required to use a competitive process based on the principles of competitive procurement in the Uniform Administrative Guidance set out at 2 CFR 200.318-200.326.

Unlike under WIA, there is no "designation" or "certification" of an entity as a one-stop operator, including a Local Board. Section 107(g)(2) of WIOA states that a Local Board may be designated or certified as a one-stop operator only with the agreement of the CEO in the local area and the Governor. The DOL interprets this provision to create an additional check for situations where a Local Board is selected to be one-stop operator through the competitive process as required under WIOA sec. 121(d)(2)(A) and as described in this proposed subpart at § 678.605(d). In these situations, it is appropriate to require that the Governor and chief local official to approve the selection.

The DOL received many comments during consultations regarding the impact of competition on local services. This proposed subpart seeks to clarify and address those concerns. For example, some States shared concerns that the outcome of such a competition may result in the layoff of State merit staff. Proposed § 678.635 clarifies that merit staff may continue to work in the one-stop so long as a system for management of merit staff in accordance with State policies and procedures is established. This is consistent with how some local non-governmental one-stop operators manage merit staff currently under WIA. Local government staff may also work in the one-stop regardless of who the operator is, if they are responsible for delivering a one-stop partner program's services.

Additionally, Stakeholders have voiced concerns about the cost and burden associated with running a competition, as well as situations where there are a limited number of, or only one, possible provider(s). While procurement can take time, Local Boards are encouraged to perform extensive market research and prepare a thorough cost and price analysis to best identify the type of procurement most appropriate to minimize cost and burden of the competitive process. A Local Board has the flexibility to identify and implement the options set forth in

proposed § 678.605(d). This may include a limited competition where a smaller number of providers, identified in market research, Requests of Information (ROI), and/or the cost price analysis, are identified and invited to apply. Sole source awards are allowable in only very limited circumstances. For example, concern about the time associated with competition or failure to plan sufficient time for a competition does not constitute an "unusual and compelling urgency" as defined in § 678.605(d). Thus, Local Boards retain flexibility to reduce burden while remaining consistent with the provisions of WIOA. WIOA describes a more robust role for Local Boards and partners to jointly develop local plans and one-stop MOUs, and the DOL and ED strongly recommend that Local Boards align these activities with the one-stop operator function and competitive process. Similarly, the competitive process can and should provide for a transition time that minimizes or eliminates disruption in services to participants. This can be achieved in a variety of ways, including provisions in the competition to ensure some staff continuity, transition time between operators, and requiring robust standard operating procedures to be developed by one-stop operators.

Finally, numerous States and local agencies have inquired as to their eligibility to be a one-stop operator. There is nothing in the statute or in these proposed regulations that would prevent a State workforce agency or local agency from competing for and being selected as a one-stop operator. Because Local Board structures vary across State and local areas, in order to ensure there is no real or apparent conflict of interest, Local Boards (or State Boards in the case of single State areas) will need to have robust conflict of interest policies, as well as firewalls in place to ensure that development and conduct of the Board competition is kept separate and apart from the State or local agency, particularly if that entity is the current one-stop operator. Additionally, the firewalls and conflict of interest policy must ensure that, if selected as operator,

there are internal controls to ensure that the agency, as operator, has oversight and management from a source other than itself. Use of internal controls and firewalls to avoid conflicts of interest are also addressed in proposed § 679.430.

In sum, this proposed regulation represents the most flexibility that could be offered to Local Boards within the confines of the statutory requirement that one-stop operators be selected through a competitive process.

§ 678.600 Who may operate one-stop centers?

Proposed §§ 678.600(a)-(d) describe who may operate a one-stop center. As stated in paragraph (a), WIOA allows a one-stop operator to be a single eligible entity or a consortium of one-stop partners. Consortia, like single entities, must be selected through a competitive process. Proposed paragraph (c) lists the types of entities what may be selected to be the one-stop operator. These repeat the eligible entities from sec. 121(d)(2)(B) of the statute, and also clarify that a Local Board, with the approval of the chief local elected official and the Governor, may serve as a one-stop operator, as stated in proposed paragraph (c)(6), and that another interested organization which is capable of carrying out the duties of one-stop operator may serve as the operator, as stated in proposed paragraph (c)(7). Proposed § 678.600(d) repeats the requirement in sec. 121(d)(3) of WIOA that elementary schools and secondary schools are not eligible to be one-stop operators; however, nontraditional public secondary schools such as night schools, adult schools, or area career and technical education schools are eligible to be operators.

§ 678.605 How is the one-stop operator selected?

Proposed § 678.605 requires the one-stop operator to be selected through a competitive process conducted not less than every 4 years. As discussed above, the Departments interpret sec. 121(d)(2)(A) of WIOA to require a competition for selection of a one-stop operator.

Competition provides the best method of providing that Local Boards examine operator effectiveness. Additionally, regular competition allows Local Boards to make adjustments based on findings of the one-stop certification process described in proposed subpart F of this part, particularly to the role of the operator and other specifics that may shift as one-stop partners and the Local Board update their MOUs. The DOL received feedback that the burden of a competition every year would be large, and the Departments preliminarily concur. In looking at options, the Departments were concerned that a period of 3 years might also be too short because if a Local Board were to conduct a full competition with a Request for Proposals (RFP), it could take as long as 18 months and would result in a Board preparing for the next RFP before the current operator had an opportunity to demonstrate performance. Durations of 5 years or more presents a risk of having an ineffective operator in place for an extended period. Therefore, proposed § 678.605 settled on a time period of 4 years to ensure that there is a solid period of performance in which to evaluate effectiveness of the operator, including the results of the one-stop certification. This proposed section also provides flexibility to both States and to local areas to require or implement competitions more frequently than every 4 years. The Departments seeks comments regarding the length of time required between competitions for operators.

Proposed §§ 678.605(a), (b), and (c) require the one-stop operator competition to be done through a competitive process. In most cases, the entity conducting the competition to procure a one-stop operator will be the Local Board, pursuant to its responsibility under sec. 107(d)(10)(A) of WIOA to select the one-stop operators. However, in some cases, such as when the one-stop is in a single State local area, a State entity might conduct the competition. If a State conducts the competition, the State must follow applicable State procurement laws. Other entities, including subrecipients of a State (such as local areas) must conduct the competition following the

principles of competitive procurement in the Uniform Administrative Guidance at chapter II of 2 CFR.

This should simplify implementation for Local Boards. The requirements of the competitive process identified in WIOA should be consistent with the principles of competitive procurement in the Uniform Administrative Guidance set out at 2 CFR parts 200 and 2900. However, while the competitive process described in this proposed subpart is consistent with the principles of competitive procurement in the Uniform Administrative Guidance, not every particular requirement or process of that Guidance is applicable. This proposed subpart seeks to establish a particular competitive process that fulfills the requirements of sec. 121(d)(2)(A) of WIOA for a competitive process, while remaining consistent with the principles set forth in the Uniform Administrative Guidance. The Departments want to make clear that the specific requirements of the Uniform Guidance are only applicable where the subpart specifically refers to it. This approach provides sufficient flexibility to enable a range of operators, including current one-stop operators, State agencies, or consortia of required partners to compete for and be selected as one-stop operator. The Departments seek comments regarding the nature and extent of the competitive process outlined in the proposed regulations.

Proposed § 678.605(d) states that non-Federal entities, including subrecipients of a State (such as local areas) must first determine the nature of the competitive process to be used. The different processes that may be used are procurement by sealed bids or procurement by competitive proposals. Procurement by sole-source is permitted only under limited conditions. Because of the potential for abuse of the sole source selection method, DOL intends to set a high bar for justifying that there is only one possible operator. Local Boards cannot use their past experience with an entity being the one-stop operator or one response to Requests for

Information (RFI) alone as justification. Robust market research, combined with other methods, including but not limited to an RFI and a detailed cost and price analysis, will help a Local Board meet the burden of demonstrating they meet the requirement of proposed § 678.605(d)(3)(i) for utilizing sole source selection. Additionally, the Local Board must comply with its own procurement policies regarding sole source procurements.

There are two scenarios listed in proposed paragraph (d)(3)(i) that justify the use of sole-source procurement, and as discussed the Departments envision limited use of these options. These two scenarios are consistent with the circumstances that justify sole source selection under the Uniform Administrative Guidance at 2 CFR 200.320(f), with the important exception of 2 CFR 200.320(f)(3). Governors may not approve a written request for sole source selection of a Local Board unless it complies with § 678.605(d)(3).

Proposed § 678.605(e) requires maintenance records, which are crucial to demonstrate compliance with the requirements of this subpart.

§ 678.610 How is sole source selection of one-stop operators accomplished?

Proposed § 678.610 explains how sole-source selection of one-stop operators is accomplished. It includes requirements about maintaining written documentation and developing appropriate conflict of interest policies. It states that a Local Board can be selected as one-stop operator through sole-source procurement only with the agreement of the CEO in the local area and the Governor. The Governor must approve the conflict of interest policies the Local Board has in place when also serving as one-stop operator. This is consistent with DOL's interpretation of sec. 107(g)(2) of WIOA – the section adds an additional check in the situations where a Local Board is selected to be operator.

§ 678.615 Can an entity serving as one-stop operator compete to be a one-stop operator under the procurement requirements of this subpart?

Proposed § 678.615(a) states that Local Boards may compete to be selected as a one-stop operator only if appropriate firewalls and conflict of interest policies and procedures are in place. The Departments seek comments on whether and how a sufficient firewall could be established in such a competition, whether alternate entities could conduct the competition, and who those entities might be.

Proposed § 678.615(b) allows State or local agencies to compete for, and be selected as, one-stop operators. However, the proposed paragraph recognizes that there would need to be strong firewalls, internal controls, and conflict of interest policies and procedures in place. There is precedent for State agencies applying and being selected as one-stop operators under WIA. For example, in one multi-county local area, the Local Board issued an RFP on a per county basis. In one county, a community action program was selected as the operator. In another county, the State workforce agency was selected as the operator. In this scenario, State workforce agency staff provides both WIA and Employment Services in the county where the agency was selected as one-stop operator. In a second example under WIA, from a single area State: the State Board (which also serves as the Local Board) issued an RFP for the entire State for adult and dislocated workers and a separate RFP for youth services. A non-profit entity was selected as the operator for adult and dislocated worker services. That non-profit then subcontracted with other non-profits to serve the different geographic regions of the State. The staff of the State workforce agency continues to provide the labor exchange services in the one-stop career centers. A State agency was selected as the youth provider. Additional sub-awards were made by that State agency to ensure that all ten youth program elements were available.

However, in the above two scenarios and any scenario where the State agency is competing to be the one-stop operator, there is a high risk for conflict of interest, particularly in the case of single State areas. Therefore, proposed §678.615(b) and (c) require robust conflict of interest policies as well as internal firewalls within the State agency to address the real and perceived conflicts of interest that could arise for a State or local agency applying to a competition run by a Local Board.

The DOL notes that this proposed section is relevant to the first competitions that are conducted after these regulations are promulgated for one-stop operators. With appropriate firewalls and conflict of interest policies and procedures to provide a fair and open competitive process, entities serving as one-stop operators at the time these regulations are promulgated, including Local Boards and other current one-stop operators, may compete and be selected as operator under the competition requirements in this proposed subpart. However, like the entities specifically mentioned in this proposed section, appropriate firewalls must be in place to provide that the current operator is not involved in conducting the competitive process, as that would be an inherent conflict of interest.

§ 678.620 What is the one-stop operator's role?

Proposed § 678.620(a) describes the role of the one-stop operator without prescribing a specific and uniform role across the system. The proposed minimum role that an operator must perform is coordination across one-stop partners and service providers. Additionally, the proposed paragraph (b) prohibits one-stop operators from assuming functions that are inherently the responsibility of the Local Board under proposed § 679.370. The DOL seeks comments as to whether all of the functions listed in proposed paragraph (b) are accurately described as inherent to the responsibility of a Local Board. As the one-stop system evolved under WIA, some of the

Local Board responsibilities may have changed or been devolved to the operator or fiscal agent as well.

§ 678.625 Can a one-stop operator also be a service provider?

Proposed § 678.625 allows a one-stop operator to also be a service provider. However, the section clarifies that there must be firewalls in place to ensure that the operator is not conducting oversight of itself as service provider. There also must be proper internal controls and firewalls in place to ensure that the entity, in its role as operator, does not conflict with its role of service provider. This is consistent with the firewall and internal control provisions in proposed § 679.430.

§ 678.630 Can State merit staff still work in a one-stop where the operator is not a governmental entity?

Proposed § 678.630 addresses the concern about whether State merit staff can continue to work in a one-stop where the operator is an entity other than the State. State merit staff support numerous programs at the one-stop career center, including Wagner-Peyser, Vocational Rehabilitation, UI, and the JVSG program. Some States have shared concerns that competition may result in the layoff of State merit staff. Proposed § 678.630 clarifies that State merit staff may continue to work in the one-stop so long as a system for management of merit staff in accordance with State policies and procedures is established. This is consistent with how some local non-governmental one-stop operators manage merit staff currently under WIA. Local government staff may also work in the one-stop regardless of who the operator is, if they are responsible for delivering a one-stop partner program's services. Nothing prohibits this from occurring, and there are numerous examples under WIA where this is currently occurring, including the above scenario of a single area State where the State Board (which also serves as

the Local Board) issued an RFP for the entire State for adult and dislocated workers and a separate RFP for youth services. A non-profit entity was selected as the operator for adult and dislocated worker services. That non-profit then subcontracted with other non-profits to serve the different geographic regions of the State. The staff of the State workforce agency continues to provide the labor exchange services in the one-stops due to the merit staffing requirements. In another multi-county local area, the Local Board issued an RFP for a single operator throughout the entire local area. A large-scale non-profit was selected as the operator. Under the arrangement, State merit staff still provided labor exchange services because of the merit staffing requirement but under the operational direction of the one-stop operator.

Similar to State merit staff, nothing would prevent local government staff from being employees in the one-stop center, although the Department recognizes that local government employees are not equivalent to the State merit staff, because State merit staff are governed by the requirements attached to specific programs that must be in the one-stop regardless of operator.

§ 678.635 What is the effective date of the provisions of this subpart?

To ensure an orderly transition, as authorized under sec. 503 of WIOA, proposed § 678.635(a) states that one-stop operators selected through the competitive process described in this subpart need to be in place no later than July 1, 2017. This lengthy transition period serves several goals: (1) It allows sufficient time for State and local areas to prepare to transition to a competitive process, including conducting market research, RFIs, cost and price analysis, and competitions; (2) it reduces or eliminates the likelihood of disruption in services to participants as Local Boards have time to plan for and incorporate into the competition a plan for transition to a new provider; and (3) it allows State and local areas to have the WIOA Final Rule to use to

guide the implementation of a competitive process. It is important for Local Boards to begin planning for competition immediately, and therefore proposed § 678.635(b) states that Local Boards must engage in and be able to demonstrate they are planning for a competition for one-stop operator in PY 2015 (July 1, 2015 – June 30, 2016).

6. Subpart E—One-Stop Operating Costs

One-stop partner funding of infrastructure costs is intended to:

(1) Maintain the one-stop delivery system to meet the needs of the local areas;

(2) Reduce duplication by improving program effectiveness through the sharing of services, resources and technologies among partners;

(3) Reduce overhead by streamlining and sharing financial, procurement, and facilities costs;

(4) Encourage efficient use of information technology to include where possible the use of machine readable forms and shared management systems; and

(5) Ensure that costs are appropriately shared by one-stop partners by basing contributions on proportionate share of use, and requiring that all funds are spent solely for allowable purposes in a manner consistent with the applicable authorizing statute and all other applicable legal requirements, including the Federal cost principles; and

(6) Ensure that services provided by the one-stop partners to reduce duplication or to increase financial efficiency at the one-stop centers are allowable under the partner's program.

§ 678.700 What are one-stop infrastructure costs?

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

to the one-stop common identifier as required by sec. 121(e)(4) of WIOA. The Departments seek comments as to other common identifier costs, or other types of costs, to include in the definition of infrastructure costs.

Jointly funding services is a necessary foundation for an integrated service delivery system. Proposed § 678.700(c) reiterates that all partner contributions to the costs of operating and providing services within the one-stop center system must adhere to the partner program's Federal authorizing statute, and to all other applicable legal requirements, including the Federal cost principles that require costs that are allowable, reasonable, necessary and allocable. There are a variety of methods to allocate costs, for instance: based on proportion of a partner program's customers of all customers coming to the one-stop, proportion of partner program's staff among all staff at the one-stop, or based on a partner program's use of a particular expense item such as certain equipment. The DOL's previous Financial Management Technical Assistance Guide published for WIA remains useful for cost allocation explanations. See http://www.doleta.gov/grants/pdf/TAG_PartI.pdf and http://www.doleta.gov/grants/pdf/TAG_PartII_July2011.pdf. The DOL and ED jointly will update this guide and provide technical assistance on cost allocation.

§ 678.705 What guidance must the Governor issue regarding one-stop infrastructure funding?

Proposed § 678.705 addresses the requirement in sec. 121(h)(1)(B) of WIOA for the Governor to issue guidelines to State programs and guidance to local areas regarding infrastructure funding. The Departments have interpreted the statute also to require that the local areas follow these guidelines, and to allow the State grantee to monitor local areas for compliance with the Governor's guidance. The proposed section includes certain requirements

for the Governor's guidance, including establishing roles, defining equitable and efficient methods for negotiating around infrastructure costs, and establishing timelines for local areas. These requirements are essential to ensuring a consistent general approach to the Governors' guidance across States, and appropriate timeframes which then allow for one-stop certification, competition of one-stop operator, and inclusion of funding agreement terms into the local State plan. The proposed rule allows for different methods of reaching consensus, and different ways for the Governor to interact with a local area during the consensus-building process. The Departments seek comments about the types of information or requirements local areas would like to see included in guidance issued by the Governor.

§ 678.710 How are infrastructure costs funded?

Proposed § 678.710 indicates that sec. 121(h)(1) of WIOA establishes two methods for funding the infrastructure costs of one-stop centers: a local one-stop funding mechanism and a State one-stop funding mechanism. Both methods utilize the funds provided to one-stop partners by their authorizing legislations. There is no separate funding source for one-stop infrastructure costs.

§ 678.715 How are one-stop infrastructure costs funded in the local funding mechanism?

Proposed § 678.715 addresses the local funding mechanism. Local Boards, in consultation with CEOs, should engage one-stop partners early in discussions about one-stop center locations and other services, so that decisions about physical locations and services are cooperatively made, and can be financially supported by the partners within the workforce system. Under the local mechanism, local partners can contribute amounts in excess of the limitations contained under the State funded infrastructure mechanism at sec. 121(h)(2)(D)(ii) of WIOA, if the parties agree that is the proportionate share of their use for reasonable one-stop

infrastructure costs and it is consistent with the Federal authorizing statute and other applicable legal requirements, including Federal cost principles Under this proposed paragraph, agreement is achieved when all of the one-stop partners sign the MOU with the Local Board, which includes a final agreement regarding funding of infrastructure that includes the elements listed in proposed § 678.755, or an interim funding agreement that includes as many of these elements as possible.

§ 678.720 What funds are used to pay for infrastructure costs in the local one-stop infrastructure funding mechanism?

Proposed § 678.720 explains the funding that one-stop partners can use to pay for infrastructure cost contributions. Partner programs can determine the funds they will use, but these funds must still meet the requirements of the program's relevant statutes and regulations. Further, all one-stop partners must work together to administer the partner programs and the one-stop and other activities of the core programs under WIOA as efficiently and effectively as possible. This will ensure that, as recipients and stewards of Federal funds for all of these programs, the partners and their subrecipients administer these programs and activities to meet all applicable legal requirements and goals. Different Federal statutes and regulations define administrative costs slightly differently. Some programs' statutes and regulations define all of the infrastructure costs listed in § 678.700 as administrative costs, some programs' statutes and regulations define some of the infrastructure costs as administrative costs, and some as program costs. Under this proposed paragraph, one-stop partner programs must adhere to the administrative and program cost limitations of their program's statutes and regulations.

Proposed § 678.720(a) would give State agencies responsible for title II of WIOA or the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins Act) great flexibility in

determining how to pay for infrastructure costs under the local one-stop funding mechanism. It would permit a State eligible agency under title II of WIOA to use Federal funds that were available for State administration of title II of WIOA. Similarly, proposed § 678.720 would permit a State eligible agency under the Perkins Act to use Federal funds that were available for State administration of post-secondary level programs or activities. Additionally, proposed § 678.720 would permit a State eligible agency under title II of WIOA or the Perkins Act to use non-Federal funds that these State agencies contribute to meet these programs' matching or maintenance of effort requirements in lieu of the State's administrative funds from its Federal grants. Further, if a State eligible agency were to delegate to a local entity or a consortium of local entities the authority to serve as the local one-stop partner pursuant to proposed § 678.415(b) and (e), the entity or consortium could contribute local administrative funds for title II of WIOA or the Perkins Act, respectively, to the infrastructure costs in lieu of a contribution from the State's administrative funds from its Federal grants. The goal of providing the State agencies with this flexibility is to enable them to meet their responsibilities for paying one-stop infrastructure costs in a manner that best allows them to meet their responsibilities as one-stop partners and grantees under title II of WIOA or the Perkins Act. The Departments seek public comment on whether the proposed regulation would achieve this goal.

§ 678.725 What happens if consensus on infrastructure funding is not reached at the local level between the Local Board, chief elected officials, and one-stop partners?

Proposed § 678.725 states that failure to sign the MOU containing the final infrastructure funding agreement or interim agreement by the beginning of each PY would trigger the State one-stop infrastructure funding mechanism. The proposed section states that Local Boards must notify the State if they cannot reach consensus. This notification policy must be included in the

Governor's guidance, as required by proposed § 678.705(b)(3). The State monitors the local areas to address violations of State guidance. The Governor's guidance might establish an earlier date for notification to the State of milestones or decision points in the negotiation process.

§ 678.730 What is the State one-stop infrastructure funding mechanism?

Proposed § 678.730 discusses the State infrastructure funding mechanism. In establishing a State-funded alternative to the local one-stop infrastructure funding mechanism, the statute ensures infrastructure costs will still be funded if one-stop partners cannot agree on their contribution amounts to fund the infrastructure of the one-stop center. An important goal under both the local and State funding mechanisms is to ensure that each one-stop partner contributes its proportionate share to the funding of one-stop infrastructure costs, consistent with the Federal cost principles. This is in alignment with the requirements in the new Uniform Requirements, cost principles and audit requirements issued on December 26, 2014 (2 CFR part 200). In the State infrastructure funding mechanism, the Governor determines how much each partner will contribute, as described in proposed §§ 678.735 and 678.740. The State Board determines how the contributed funds will be allocated out to local areas, as described in proposed § 678.745.

§ 678.735 How are partner contributions determined in the State one-stop funding mechanism?

In the State-funded option proposed in §§ 678.735(a)-(b), the Governor, after consultation with State and Local Boards and CEOs, will determine the amount each partner must contribute to assist in paying the infrastructure costs of one-stop centers. The Governor must calculate amounts based on the proportionate use of the one-stop centers by each partner

and other factors stated in proposed § 678.735(a). Proposed § 678.735(b) clarifies that because Native American Program grantees under part 684 of this proposed rule have a government-to-government relationship, the Governor does not determine the contribution amounts for infrastructure grants from these grantees. The Native American Programs, as required one-stop partners, must contribute to infrastructure funding, and must negotiate with the Local Board on that contribution amount. The Local Board and Native American Program grantee can ask for assistance from the State in negotiating the MOU and infrastructure cost funding, and can also consult with DOL to resolve any impasse.

Proposed § 678.735(c) includes the limitation for one-stop partners' contributions, based on a percentage of their funding allocation, from sec. 121(h)(2)(D)(ii) of WIOA. These limitations do not apply to the local one-stop funding mechanism. However, the use of a program partner's funds must meet the requirements of the program's authorizing statute, all other applicable legal requirements, and the requirements in this subpart. Proposed § 678.735(c)(1) states that the cap on WIOA formula and Wagner-Peyser required contributions will not exceed 3 percent of the amount of funds provided to carry out that program for a PY. Although WIOA sec. 121(h)(2)(D)(ii)(I) refers to a fiscal year, WIOA and Wagner-Peyser funds are provided on a PY basis (which is from July 1 through June 30 of the following year). Therefore, calculating on a fiscal year basis would cause numerous administrative difficulties, because the WIOA and Wagner-Peyser formula programs receive their appropriations at two different times during the fiscal year. This interpretation is consistent with the statute because under WIOA sec. 121(h)(1)(A)(ii) the determination of whether the State infrastructure funding mechanism will apply occurs on July 1, at the beginning of each PY.

Proposed § 678.735(c)(2) includes a clarification that the 1.5 percent cap on contribution applies to the relevant education program and employment and training program of a required one-stop partner. For instance, States receive a large block grant for delivering TANF services. The 1.5 percent cap on contributions applies to the employment and training activities under that grant, not the entire TANF grant. Proposed § 678.735(c)(3) states that the entities administering the Vocational Rehabilitation program must not be required to contribute more than a specific cap each year. In States where there are two Vocational Rehabilitation agencies (a general agency and a blind agency), the combined contribution from these programs cannot exceed the cap in the proposed rule, which is based on the total allotment to the State.

Because there is a chance that the funding amount limitations would prevent the allocation from being fully funded, proposed § 678.735(d) allows the Governor to direct the local partners to reenter negotiations to resolve the shortage in a manner that is consistent with each partner's program's authorizing laws and regulations and all other applicable legal requirements, including the Federal cost principles, or to identify alternate infrastructure funding. When local partners reenter negotiations in this situation, the new negotiations should be conducted according to the same procedure as negotiations are conducted under the local funding mechanism, as discussed in proposed § 678.715. The limitations for one-stop partners' contributions discussed in proposed § 678.735(c) do not apply to the local funding mechanism. If an agreement is still not reached, the Governor will reduce the allocation for total one-stop infrastructure funding for that local area to match the amount of available partner contributions under the cap. In implementing a one-stop infrastructure allocation by the Governor, although sec. 121(h)(3)(B) of WIOA refers to the Governor allocating out to local areas the funds provided under sec. 121(h)(1) of WIOA, which is the local funding allocation mechanism, that

section as enacted would also require the Governor to allocate those funds to only the local areas that are not using the local funding mechanism. This incongruity seems a clear scrivener's error – sec. 121(h)(3)(B) was meant to instruct the Governor to apply the allocation formula developed by the State Boards only to the local areas that are not subject to an agreement under the local funding mechanism. Proposed §§ 678.730 through 678.745 reflect this interpretation.

§ 678.740 What funds are used to pay for infrastructure costs in the State one-stop infrastructure funding mechanism?

Proposed § 678.740 describes the funds that one-stop partners can use to pay for infrastructure costs. For some partner programs, some infrastructure costs are classified as program costs under the partners' authorizing statute or implementing regulations, while other infrastructure costs are classified as administrative costs. In other partner programs, all infrastructure costs are classified as administrative costs. One-stop partner programs must follow their own program's rules in classifying costs as program or administrative costs, and must adhere to their program's administrative cost limit.

Like proposed § 678.720(a), proposed §§ 678.740(c) and (d) would give State eligible agencies responsible for title II of WIOA and the Perkins Act great flexibility in determining how to pay for infrastructure costs under the State one-stop funding mechanism. It would enable these State agencies to use Federal funds that were available for State administration of title II of WIOA or for the administration of post-secondary level programs and activities under the Perkins Act, as well as non-Federal funds that the partners contribute to meet these programs' matching or maintenance of effort requirements. Further, as with § 678.720(a), if a State eligible agency were to delegate to a local entity or a consortium of local entities authority to serve as the local one-stop partner pursuant to proposed §§ 678.415(b) and (e), the entity or consortium could

contribute local administrative funds for title II of WIOA or the Perkins Act, respectively, to the infrastructure costs in lieu of a contribution from the State's administrative funds from its Federal grants to be contributed to the one-stop infrastructure costs.

The goal of providing the State agencies with this flexibility is to enable them to meet their responsibilities for paying one-stop infrastructure costs in a manner that best allows them to meet their responsibilities as one-stop partners and grantees under title II of WIOA or the Perkins Act. The Departments seek public comment on whether the proposed regulation would achieve this goal.

§ 678.745 How is the allocation formula used by the Governor determined in the State one-stop funding mechanism?

Proposed § 678.745 states that the State Board must establish an allocation formula, taking into account several requirements from WIOA 121(h)(3)(B), and the Governor will use the allocation formula to distribute funds to local areas that are opting to use the State infrastructure cost funding mechanism, so long as the distribution is consistent with the Federal cost principles for each affected partner program.

§ 678.750 When and how can a one-stop partner appeal a one-stop infrastructure amount designated by the State under the State infrastructure funding mechanism?

Proposed § 678.750 requires an appeals process, as outlined in WIOA sec. 121(h)(2)(E), to be established by the Governor and proposes similar principles regarding timely resolution as those seen under other appeals processes, such as the WIA regulations at 20 CFR 661.280. The Departments seek comments regarding the proposed State infrastructure funding mechanism, and in how local areas with existing successful infrastructure cost agreements have funded these costs and what factors contributed to local areas' success.

§ 678.755 What are the required elements regarding infrastructure funding that must be included in the one-stop Memorandum of Understanding?

Proposed § 678.755 explains what information the local areas must include about operating costs in the one-stop MOU, described in proposed § 678.500. Under the State one-stop infrastructure funding mechanism, the partner contributions will be required to be included in the MOU. Once the State infrastructure funding mechanism is triggered, and the Governor determines each partner's required funding contribution, the partners must include these in, and sign, the MOU.

§ 678.760 How do one-stop partners jointly fund other shared costs under the Memorandum of Understanding?

In addition to infrastructure, WIOA sec. 121(i)(1) requires that one-stop partners must contribute jointly to fund the cost of career services, and allows one-stop partners to jointly fund other shared services, such as intake, assessment, skill appraisals, identification of appropriate services, referrals, accommodations and other services, including business services. Shared operating costs may also include shared costs of the Local Board's functions. Under proposed § 678.760, these costs must be determined as part of the MOU described in proposed § 678.500 and be comprised of cash and noncash resources. Non-cash, or in-kind, contributions may be such resources as space, equipment, staff to deliver shared services, and other examples. The Departments expect one-stop partners to engage early with each other and the Local Board to identify services that benefit multiple populations and programs and could be jointly funded through the MOU. Such agreements improve the efficiency and effectiveness of the one-stop system, and benefit the system's customers. WIOA neither requires programs to examine if other funds are available before using program funds to pay for a service, nor does it establish

requirements that any program can only be a "payer of last resort." One-stop partners may jointly fund services in a manner of their choosing that meets the requirements of this part, meets the Federal cost principles, and meets the requirements of the programs' authorizing statutes and regulations.

The DOL published Financial Management Technical Assistance Guides for use under WIA that are still useful in determining reasonable cost allocation methodologies, and how to jointly fund shared activities and services. See http://www.doleta.gov/grants/pdf/TAG_PartI.pdf and http://www.doleta.gov/grants/pdf/TAG_PartII_July2011.pdf. The DOL will provide further technical assistance on this topic.

7. Subpart F—One-Stop Certification

Proposed part 678, subpart F implements the requirements in sec. 121(g) of WIOA that the Local Board certify the one-stop center every 3 years. The certification process is important to setting a minimum level of quality and consistency of services in one-stop centers across a State. The certification criteria allow States to set standard expectations for customer-focused seamless services from a network of employment, training, and related services that help individuals overcome barriers to becoming and staying employed. The Departments seek comments on how local areas can best measure the customer satisfaction of individuals who utilize American Job Centers as an aspect of effectiveness.

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

Proposed § 678.800(a) requires that State Boards establish criteria and procedures for certification, and allows Local Boards to use additional certification factors in order to respond to labor market, economic, and demographic conditions and trends in the local area. The criteria

must assess the effectiveness, physical and programmatic accessibility, and continuous improvement of one-stop centers and the one-stop delivery systems.

Proposed § 678.800(b) sets requirements for evaluations of effectiveness, including those mandated by sec. 121(g)(2)(B)(ii) and (iii) of WIOA. States may establish further effectiveness factors, and set specific standards for program coordination or integration. Program coordination standards might include customer-focused standards such as: front desk and intake staff are trained to complete an initial assessment of a participant's needs and inform participants of the services available to them; intake forms and basic assessment tools and processes are harmonized across programs to minimize customers filling out multiple forms; and staff work in functional rather than program teams. Program coordination standards might also include operational standards such as: integrated resource teams such as those piloted in the Disability Employment Initiative or other methods are used to jointly fund services to meet the specific needs of individuals; resource rooms include high-quality up-to-date information about the services and supportive services available to individuals; Web sites and materials for the one-stop provide information about the services and supports of all partner programs; and business services teams include representatives or otherwise integrate with key partner programs and represent the center as a whole. This paragraph also emphasizes the importance of maximizing access to services to all customers, particularly outside regular business hours. Access to services can be through a physical one-stop location, but can also be through online or phone access as discussed in the § 678.300(e) definition of "direct linkage," as long as services are equally available to all customers, including those with disabilities. The Departments seek input on other important factors in making one-stop centers operate more efficiently and effectively,

both for consideration as one-stop certification criteria and for general program implementation and management.

Proposed paragraph § 678.800(c) describes evaluations of continuous improvement, including those mandated by sec. 121(g)(2)(B)(i) of WIOA. Continuous improvement requires local areas and one-stop centers to collect, analyze and use several types of data, from customer satisfaction and feedback to program and performance data. Professional development is a key feature of any continuous improvement loop, in order to ensure that staff are aware of the implications of recent evidence-based research, and can implement the latest policies and procedures established at the local, State and Federal levels.

Proposed § 678.800(d) describes how Local Boards apply the certification criteria, including that Local Boards must assess the one-stop centers at least once every 3 years. This section also requires that any additional local criteria be reviewed and updated as part of the biennial review and modification process for updating local plans. This provision also explains that this certification must be completed for one-stop centers to be eligible to receive infrastructure funds in the State infrastructure funding mechanism, as required by sec. 121(g)(4) of WIOA.

Proposed § 678.800(e) emphasizes that all one-stops must be physically and programmatically accessible. The requirements related to accessibility are set forth in the regulations implementing WIOA sec. 188, at 29 CFR part 37.

In addition to complying with the applicable architectural and programmatic accessibility requirements of the proposed regulations, one-stop centers and Boards may wish to consider the use of "universal design," which designs inclusive space and materials to be available to individuals regardless of their range of abilities, mobility, age, language, learning style,

intelligence, or educational level. Improved availability, a welcoming atmosphere, inclusive settings, and high quality customer service benefit all customers. Extensive technical assistance is available at www.ada.gov, and www.lep.gov. The Departments recommend that State Boards and Local Boards engage early with relevant Equal Opportunity officers in establishing the criteria for determining compliance with accessibility standards and other requirements related to providing equal opportunity, particularly for persons with disabilities.

8. Subpart G—Common Identifier

The proposed regulation in subpart G promotes increased public identification of the one-stop delivery system through use of a common identifier across the nation, consistent with sec. 121(e)(4) of WIOA,

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

Proposed § 678.900(a) designates the name "American Job Center" as the common identifier for the one-stop delivery system. This designation was made by the Secretaries after consulting with the heads of other appropriate departments and agencies, representatives of State Boards and Local Boards, and other stakeholders in the one-stop delivery system. As part of this consultation process, DOL engaged in a series of town hall meetings with State workforce agencies, and State and Local Workforce Boards, conducted in September and October 2014, in various cities across the country. In addition, two webinars were conducted on November 14 and December 9 with various stakeholders, including State agencies, State and Local Workforce Boards, and one-stop partners, and were open to the public. The topic of the webinar was dedicated solely to the topic of the common identifier for the one-stop delivery system. The DOL has also consulted with other departments and agencies, specifically ED and the Department of Health and Human Services (HHS). The Departments also specifically request

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

“American Job Center” is the common identifier that is currently being used by several one-stop delivery systems; furthermore, it has been promoted by the DOL and used by other Federal agencies since the issuance of Training and Employment Guidance Letter (TEGL) No. 36-11 on June 14, 2012. Continued use of the identifier “American Job Center” will avoid the confusion of implementing a new common identifier; and several State and Local Boards have already begun incorporating the identifier in their products, materials, Web sites, and facilities. The Departments continue to seek feedback on the name and associated logo as part of the proposed rulemaking process.

Proposed § 678.900(b) requires 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 one-stop delivery system. The Departments will issue templates and designs of a logo, phrase, or other material for the one-stop delivery system to use to associate this common identifier with the system. Local Boards should immediately start the process of incorporating the identifier on products, programs, activities, services, and related and materials. Incorporating the identifier on facilities and related property may take time. Local Boards may start the process of incorporating the identifier on facilities and property anytime, but must start this process at the time these regulations are published as a final rule, and fully implement the requirements listed in the final rule within PY 2016.

Proposed paragraph § 678.900(c) allows the use of additional identifiers, per sec. 121(e)(4) of WIOA.

V. Rulemaking Analyses and Notices

A. Executive Orders 12866 and 13563: Regulatory Planning and Review

Executive Order (E.O.) 12866 directs agencies, in deciding whether and how to regulate, to assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. E.O. 13563 is supplemental to and reaffirms E.O. 12866. It emphasizes the importance of quantifying present and future benefits and costs; directs that regulations be adopted with public participation; and, where relevant and feasible, directs that regulatory approaches be considered that reduce burdens, harmonize rules across agencies, and maintain flexibility and freedom of choice for the public. Costs and benefits are to include both quantifiable measures and qualitative assessments of possible impacts that are difficult to quantify. If regulation is necessary, agencies should select regulatory approaches that maximize net benefits. OMB determines whether a regulatory action is significant and, therefore, subject to review.

Section 3(f) of E.O. 12866 defines a "significant regulatory action" as any action that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising from legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

Summary of the analysis. The Departments provide the following summary of the regulatory impact analysis:

(1) The proposed joint rule is a "significant regulatory action" under section 3(f)(4) of E.O. 12866 and accordingly, OMB has reviewed the proposed rule.

(2) The proposed joint rule would have no cost impact on small entities.

(3) The proposed joint rule would not impose an unfunded mandate on Federal, State, local, or tribal governments as defined by the Unfunded Mandates Reform Act of 1995.

In total, the Departments estimate that this joint NPRM would have an average annual cost of $147,128,434 and a total 10-year cost of $1,154,622,032 (with 7-percent discounting). The largest contributor to the cost is the requirement related to evaluation of State programs, followed by the development of strategies to align technology and data systems across one-stop partner programs.

The Departments were unable to quantify estimates of several important benefits to society due to data limitations or lack of existing data or evaluation findings on particular items. Based on a review of empirical studies (primarily studies published in peer-reviewed academic publications and studies sponsored by the Departments), the Departments identified a variety of societal benefits: (1) training services increase job placement rates; (2) participants in occupational training experience higher reemployment rates; (3) training is associated with higher earnings; and (4) State performance accountability measures, in combination with the

Board membership provision requiring employer/business representation, can be expected to improve the quality of the training and, ultimately, the number and caliber of job placements. The Departments identified several channels through which these benefits might be achieved, including: (1) better information about training providers will enable workers to make better-informed choices about programs to pursue; and (2) enhanced services for dislocated workers, self-employed individuals, and workers with disabilities will lead to the benefits discussed above.

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

1. Need for Regulation

Section 503(f)(1) of WIOA requires publication of proposed implementation regulations. Implementing regulations are necessary in order for WIOA to be efficiently and effectively operated and such regulations will provide Congress and others with uniform information necessary to evaluate the outcomes of the new workforce law.

2. Alternatives in Light of the Required Publication of Proposed Regulations

OMB Circular A-4, which outlines best practices in regulatory analysis, directs agencies to analyze alternatives outside the scope of their current legal authority if such alternatives best satisfy the philosophy and principles of E.O. 12866. While WIOA provides little regulatory discretion, the Departments assessed, to the extent feasible, alternatives to the proposed regulations.

In this NPRM, the Departments considered significant alternatives to accomplish the stated objectives of WIOA while also attempting to minimize any significant economic impact of the proposed rule on small entities. This analysis considered the extent to which WIOA's

prescriptive language presented any regulatory options that also would allow for achieving the statute's articulated programmatic goals. In many instances, the Departments have reiterated WIOA's language in the regulatory text and expansions are offered for clarification and guidance to the regulated community. The additional regulatory guidance should create more efficient administration of the program by reducing ambiguities and subsequent State and local revisions as a result of unclear statutory language.

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

The Departments considered three possible alternatives:

(1) To implement the legislative changes prescribed in WIOA, as noted in this NPRM, thereby satisfying the legislative mandate; or

(2) To take no action, that is, to attempt to implement WIOA utilizing existing Workforce Investment Act (WIA) regulations; or

(3) To not publish any regulation and rescind existing WIA regulations, thereby ignoring the WIOA statutory requirement to publish implementing regulations and, thus forcing the regulated community to follow statutory language for implementation and compliance purposes.

The Departments considered these three options in accordance with the provisions of E.O. 12866 and chose to publish the WIOA NPRM, i.e., the first alternative. The Departments considered the second alternative, i.e., retain existing WIA regulations as the guide for WIOA

implementation, but WIOA has changed WIA's requirements substantially enough that new implementing regulations are necessary in order for the workforce system to achieve compliance. The Departments considered the third alternative, i.e., to not publish an implementing regulation and rescind existing WIA regulations, but rejected it because this option, in and of itself, does not provide sufficient detailed guidance to effectively implement the statutory requirements. Thus, regulations are necessary to achieve program compliance.

In addition to the regulatory alternatives noted above, the Departments also considered whether certain aspects of WIOA could be phased-in over a prescribed period of time (different compliance dates), thereby allowing States and localities additional time for planning and successful implementation. As a policy option, this alternative appears appealing in a broad theoretical sense and, where feasible, the Departments have recognized and made allowances for different schedules of implementation. However, upon further discussion and in order to begin to achieve the intended legislative benefits of WIOA, additional implementation delays beyond those noted in this NPRM may create potentially more issues than the benefit of alternative starting dates. Specifically, many critical WIOA elements follow upon the implementation of other provisions and, therefore, discussions around delaying aspects became quite complicated. The interrelatedness of WIOA's requirements suggested that the alternative of delaying aspects was not operationally feasible.

Furthermore, the data necessary to fully review this option does not yet exist and will not until Local Workforce Development Boards (WDBs) conduct procurements and announce awards. Similarly, performance standards will be negotiated at a future time and based on a variety of factors including State and local economic conditions, resources, and priorities. Establishing proposed standards in advance of this statutorily-defined process may not be an

efficient or effective action. The enforcement methods described in the proposed joint rule are a reflection of prescribed WIOA requirements and entity size should not in and of itself create alternative methods for compliance or different time periods for achieving compliance. Although the Departments have not determined sufficiently valid reasons for altering compliance timeframes in addition to those described in the proposed rule for small entities, we seek comment on this issue.

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

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

3. Analysis Considerations

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

For a proper evaluation of the additional benefits and costs of this NPRM, the Departments explain how the required actions of States, WDBs, employers and training entities, government agencies, and other related entities are linked to the expected benefits and estimated costs. The Departments also considered, when appropriate, the unintended consequences of the proposed regulations introduced by this NPRM. The Departments make every effort, when feasible, to quantify and monetize the benefits and costs of the joint NPRM. The Departments

were unable to quantify the benefits associated with the proposed rule because of data limitations and a lack of operational data or evaluation findings on the provisions of the proposed rule or WIOA in general. Therefore, the Departments describe the benefits qualitatively. The Departments followed the same approach when we were unable to quantify the costs.

Throughout the benefit-cost analysis, the Departments made every effort to identify and quantify all potential incremental costs associated with the implementation of WIOA as distinct from what already exists under WIA, WIOA's predecessor statute. Despite our best estimation efforts, however, the Departments might be double-counting some activities that are already happening under WIA. Thus, the costs itemized below represent an upper bound of the potential cost of implementing the statute. The Departments request comment on our cost estimates, specifically in terms of whether we have accurately captured the additional costs associated with implementation of WIOA.

In addition to this joint NPRM, the Departments plan to propose separate NPRMs to implement program-specific requirements of WIOA that fall under each Department's purview; see the Executive Summary section of this NPRM for details. While the Departments acknowledge that these proposed rules and their associated impacts are not wholly independent from one another, we are unaware of any reliable method of quantifying the effects of this interdependence. Therefore, this analysis does not capture the correlated impacts of the benefits and costs of this proposed joint rule and those associated with the other NPRMs. The Departments have made an effort to ensure there are no duplication of costs and benefits between this and the other NPRMs. We request comments from the public about the appropriateness of this assumption.

In accordance with the regulatory analysis guidance contained in OMB Circular A-4 and consistent with the Departments' practices in previous rulemakings, this regulatory analysis focuses on the likely consequences (benefits and costs that accrue to citizens and residents of the United States) of this WIOA-required NPRM. The analysis covers 10 years (2015 through 2024) to ensure it captures major additional benefits and costs that accrue over time. The Departments express all quantifiable impacts in 2013 dollars and use 3-percent and 7-percent discounting following OMB Circular A-4.

Exhibit 1 presents the estimated number of entities expected to experience an increase in level of effort (workload) due to the proposed regulations contained in this joint NPRM. These estimates are provided by the Departments and are used extensively throughout this analysis to calculate the estimated cost of each proposed provision.

EXHIBIT 1: Number of Affected Entities by Type

Entity Type	Number of Entities
States impacted by Adult Education and Family Literacy Act (AEFLA) program requirements	57[1]
States impacted by DOL program requirements	56[2]
States impacted by Vocational Rehabilitation (VR) program requirements	56[3]
States that need to develop and disseminate best practices	40
States that need low effort to implement software/IT systems	20
States that need high effort to implement software/IT systems	15
Workforce Development Boards	580

[1] Based on internal Department of Education data. This figure includes the 50 States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, the U.S. Virgin Islands, and Palau.
[2] Based on internal Department of Labor data. This figure includes the 50 States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.
[3] Pursuant to sec. 7(34) of the Rehabilitation Act of 1973, as amended, this figure includes the 50 States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands. Twenty-four States have two designated State agencies for the VR program; therefore, there are a total of 80 VR agencies. The Departments note particularly that we have sought to avoid duplication of costs, given the fact that some States have two VR agencies.

Transfer Payments

The Departments provide an assessment of transfer payments associated with transitioning the nation's public workforce system from the requirements of WIA to new requirements imposed by WIOA. In accordance with OMB Circular A-4, the Departments consider transfer payments as payments from one group to another that do not affect total resources available to society. For example, under both WIA and WIOA, financial transfers via formula grants will be made from the Federal government to the States and from the States to Local WDBs, as appropriate. In accordance with the State allotment provisions required by WIOA sec. 127, the interstate funding formula methodology is not significantly different than that utilized for the distribution of funds under WIA.[4] Final program year grant allocations will reflect WIOA requirements and are under development.

One example of where impacts are discussed qualitatively, rather than quantified, concerns the expectation that available U.S. workers trained and hired who were previously unemployed will no longer need to seek new or continued unemployment insurance benefits. Assuming other factors remain constant, the Departments expect State unemployment insurance expenditures to decline because of the hiring of U.S. workers following WIOA implementation. The Departments, however, cannot quantify these transfer payments due to a lack of adequate data.

In the subject-by-subject analysis, the Departments present the additional labor and other costs associated with the implementation of each of the proposed provisions in this NPRM. Exhibit 2 presents the compensation rates for the occupational categories expected to experience an increase in level of effort (workload) due to the proposed rule. The Departments used wage

[4] States may elect to change the distribution of funds at the local level and appropriately document such changes in the State plans. However, as small entities are fully funded by the States, which are not small entities, the Departments do not anticipate any significant impact on small entities.

rates from the Bureau of Labor Statistics' Mean Hourly Wage Rate for private and State and local employees.[5] The Departments also used wage rates from the Office of Personnel Management's Salary Table for the 2013 General Schedule for Federal employees.[6] The Departments adjusted the wage rates using a loaded wage factor to reflect total compensation, which includes health and retirement benefits. For the State and local sectors, the Departments used a loaded wage factor of 1.55, which represents the ratio of total compensation[7] to wages.[8] For Federal employees, we used a loaded wage factor of 1.69 based on internal data from DOL. The Departments then multiplied the loaded wage factor by each occupational category's wage rate to calculate an hourly compensation rate.

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

The Departments use the hourly compensation rates presented in Exhibit 2 throughout this analysis to estimate additional labor costs for each proposed provision.

Exhibit 2: Calculation of Hourly Compensation Rates

Position	Grade Level	Average Hourly Wage a	Loaded Wage Factor B	Hourly Compensation Rate c = a × b
State and Local Employees				

[5] Bureau of Labor Statistics, May 2013, National Occupational Employment and Wage Estimates, retrieved from: http://www.bls.gov/oes/current/oes_nat.htm.
[6] The wage rate for Federal employees is based on Step 5 of the General Schedule (source: OPM, 2013, Salary Table for the 2013 General Schedule, retrieved from: http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2013/general-schedule/gs_h.pdf).
[7] BLS Employment Cost Index, 2013 Average Series ID CMU3010000000000D, CMU3010000000000P (source: Bureau of Labor Statistics, 2013 Employer Costs for Employee Compensation, retrieved from: http://www.bls.gov/schedule/archives/ecec_nr.htm).
[8] The State and local loaded wage factor was applied to all non-Federal employees. Discerning the number of State and local-sector employees and private-sector employees at the local level is difficult; therefore, the Departments used the State and local-sector loaded wage factor (1.55) instead of the private-sector wage factor (1.42) for all non-Federal employees to avoid underestimating the costs.

Exhibit 2: Calculation of Hourly Compensation Rates				
Position	**Grade Level**	**Average Hourly Wage**	**Loaded Wage Factor**	**Hourly Compensation Rate**
Administrative staff[9]	N/A	$17.96	1.55	$27.84
Board staff[10]		$45.32		$70.25
Legal counsel/staff[11]		$40.68		$63.05
Local stakeholders[12]		$44.52		$69.01
Managers[11]		$45.32		$70.25
Technical staff[13]		$43.38		$67.24
Federal Employees				
Federal positions	GS-13	$38.92	1.69	$65.77

The section-by-section analysis presents the total incremental cost of the proposed joint rule relative to the baseline, i.e., the current practice under WIA. At a minimum, all affected entities are currently required to comply with the 2000 WIA Final Rule (65 FR 49294, Aug. 11, 2000); however, some affected entities may already be in compliance with aspects of the proposed joint rule. This analysis estimates the incremental cost that would be incurred by affected entities that are not yet in compliance with the proposed rule. The equation below shows the method by which the Departments calculated the incremental total cost for each provision over the 10-year analysis period.

$$\text{Total Cost} = \sum_{T=1}^{10} \left(A \sum_{=1} (N_i \times H_i \times W \times L) + \sum_{=1} A_j \times C_j \right)$$

[9] BLS OES, May 2013, 44-0000 Office and Administrative Support Occupations (http://www.bls.gov/oes/current/999201.htm#43-0000).
[10] BLS OES, May 2013, 11-1021 General and Operations Managers (http://www.bls.gov/oes/current/999201.htm#11-0000).
[11] BLS OES, May 2013, 23-10111 Lawyers (http://www.bls.gov/oes/current/999201.htm#23-0000).
[12] BLS OES, May 2013, 11-0000 Management Occupations (http://www.bls.gov/oes/current/999201.htm#11-0000).
[13] BLS OES, May 2013, average for the following occupational categories weighted by the number of employees in State government: 15-1131 Computer Programmers (http://www.bls.gov/oes/current/999201.htm#15-0000); 15-1132 Software Developers, Applications (http://www.bls.gov/oes/current/999201.htm#15-0000); 15-1133 Software Developers, Systems Software (http://www.bls.gov/oes/current/999201.htm#15-0000); and 15-1134 Web Developers (http://www.bls.gov/oes/current/999201.htm#15-0000).

Where, A_l Number of affected entities that would incur labor costs,

N_i Number of staff of labor type *i*,

H_i Hours required per staff of labor type *i*,

W_i Mean hourly wage of staff of labor type *i*,

L_i Loaded wage factor of staff of labor type *i*,

A_j Number of affected entities incurring non-labor costs of type *j*,

C_j Non-labor cost of type *j*,

i Staff type,

n Number of staff types,

j Non-labor cost type,

m Number of non-labor cost types,

T Year.

The total cost of each provision is calculated as the sum of the total labor cost and total non-labor cost incurred each year over the 10-year period (see Exhibit 3 for a summary of the 10-year cost of the proposed joint rule by provision). The total labor cost is the sum of the labor costs for each labor type *i* (e.g., administrative staff, counsel staff, and managers) multiplied by the number of affected entities that will incur labor costs, A_l. The labor cost for each labor type *i* is calculated by multiplying the number of staff required to perform the proposed activity, N_i; the hours required per staff member to perform the proposed activity, H_i; the mean hourly wage of staff of labor type *i*, W_i; and the loaded wage factor of staff of labor type i, L_i. The total non-labor cost is the sum of the non-labor costs for each non-labor cost type *j* (e.g., consulting costs) multiplied by the number of affected entities that will incur non-labor costs, A_j.

4. Subject-by-Subject Benefit-Cost Analysis

The Departments' analysis below covers the expected impacts of the following proposed provisions of the WIOA joint NPRM against the baseline of the current practice under WIA: (a) Time to Review the New Rule; (b) New Elements to State and Local Plans; (c) Development and Updating of State Performance Accountability Measures; (d) Identification and Dissemination of Best Practices; (e) Development of Strategies for Aligning Technology and Data Systems across One-stop Partner Programs to Enhance Service Delivery and Improve Efficiencies; (f) Unified or Combined State Plan; (g) Local Plan Revisions; (h) State Performance Accountability Measures; (i) Performance Reports; and (j) Evaluation of State Programs.

The Departments emphasize that many of the proposed provisions in this WIOA-required joint NPRM are also existing requirements under WIA. For example, the requirement that States "prepare performance reports" is a current requirement under WIA that States routinely undertake. Accordingly, our regulatory analysis focuses on "new" benefits and costs that can be attributed exclusively to new requirements under WIOA, as addressed in this joint NPRM. Much of WIA's infrastructure and operations are carried forward under WIOA and, therefore, are not considered "new" cost burdens under this NPRM.

a. Time to Review the New Rule

Upon publication of this joint NPRM, the regulated community would need to learn about the new WIOA requirements, including the proposed regulations, and plan for compliance.

Costs

At the State level for DOL programs, the Departments estimated this labor cost by multiplying the estimated average number of managers per State (2) by the time required to read and review the new rule (20 hours), and then by the applicable hourly compensation rate. We multiplied this product ($8,189) by the number of States (56) to estimate this one-time cost of $458,582.[14]

At the State level for the AEFLA program, the Departments estimated this labor cost by multiplying the estimated average number of managers per State (5) by the time required to read and review the new rule (40 hours) and then by the applicable hourly compensation rate. We performed the same calculation for the following occupational categories: counsel staff (1 legal counsel for 40 hours), technical staff (2 staff for 40 hours), and administrative staff (5 staff for 40 hours). We summed the labor cost for all four categories ($27,518) and multiplied the result by the number of States (57) to estimate this one-time cost of $1,568,531.

At the local level for the AEFLA program, the Departments multiplied the estimated average number of managers for all local entities within a State (40) by the time required to read and review the new rule (40 hours) and then by the hourly compensation rate. We repeated the calculation for the technical (40 staff for 40 hours) and administrative staff (40 staff for 40 hours). We did not estimate legal counsel hours for local level AEFLA programs as our experience indicates that this labor category is typically engaged only at the State level. We summed the labor cost for all three categories of personnel ($264,517) and multiplied the result by the number of States (57). This calculation yields a total of $15,077,458 in labor costs in the first year of the rule.

[14] The cost estimates in this analysis could be a little bit off due to rounding.

For State VR agencies, the Departments multiplied the estimated number of managers per VR agency (3) by the time required to read and review the new rule (20 hours) and then by the hourly compensation rate. We performed the same calculation for the counsel (1 staff for 40 hours) and technical staff (1 staff for 20 hours). We summed the labor cost for all three categories ($6,821) and multiplied the result by the number of VR agencies (80). The one-time cost is estimated to be $545,650.

The sum of these costs yields a total one-time cost of $17,650,220 for individuals from State-level DOL programs, State and local level AEFLA programs, and State VR agencies to read and review the proposed new rule. Over the 10-year period of analysis these one-time costs result in an average annual cost of $1,765,022.

b. New Elements to State and Local Plans

WIOA sec. 102(b) establishes new major content areas of the Unified or Combined State Plan, which include strategic and operational planning elements. Strategic planning elements include State analyses of economic and workforce factors, an assessment of workforce development activities, and formulation of the State's vision and goals for preparing an educated and skilled workforce that meets the needs of employers and a strategy to achieve the vision and goals. Operational planning elements include State strategy implementation, State operating systems and policies, program-specific requirements, assurances, and additional requirements imposed by the Secretaries of Labor or Education, or other Secretaries, as appropriate. WIOA sec. 108(b) establishes strategic planning and operational elements for local plans. These requirements set the foundation for WIOA principles by fostering strategic alignment, improving service integration, and ensuring that the workforce system is industry-relevant, responding to

the economic needs of the local workforce development area, and matching employers with skilled workers.

Costs

At the State level for the AEFLA program, the Departments estimated this labor cost by multiplying the estimated average number of managers per State (5) by the time required to develop, review, and revise the State Plan (40 hours) and the hourly compensation rate. We performed the same calculation for the following occupational categories: counsel staff (1 staff for 20 hours), technical staff (2 staff for 40 hours), and administrative staff (5 staff for 20 hours). We summed the labor cost for all four categories ($23,473) and multiplied the result by the number of States (57) to estimate this biennial cost of $1,337,972. Over the 10-year period, this calculation yields an average annual cost of $668,986.

The Departments estimated the consultant costs for the State-level AEFLA program by multiplying the consultant costs per State ($25,000) by the number of States (57). This calculation yields a biennial cost of $1,425,000. Over the 10-year period, this results in an average annual cost of $712,500.

At the local level for the AEFLA program, the Departments estimated this cost by multiplying the estimated average number of managers for all local entities within a State (40) by the time required to develop, review, and revise the local plan (40 hours) and the hourly compensation rate. We repeated the calculation for the administrative staff (40 staff for 20 hours). We did not estimate any legal counsel or technical staff hours for local level AEFLA programs as our experience indicates that these labor categories are typically engaged only at the State level. We summed the labor cost for the two occupational categories ($134,664) and multiplied the result by the number of States (57). The biennial cost at the local level for the

AEFLA program is estimated to be $7,675,848, which would result in an average annual cost of $3,837,924 over the 10-year period.

For State VR agencies, the Departments estimated this cost by first multiplying the estimated number of managers per VR agency (1) by the time required to review and revise the State Plan (5 hours) and the hourly compensation rate. We performed the same calculation for the technical staff (1 staff for 5 hours). Summing the labor cost for both categories ($687) and multiplying the result by the number of VR agencies (80) results in a biennial cost of $54,994 for State VR agencies. Over the 10-year period, this calculation yields an average annual cost of $27,497.

For State Boards, DOL estimates that there will be costs associated with State planning attributed to the extra effort to coordinate and develop a plan between the six core programs administered by the Departments of Education and Labor, respectively, which is a new requirement under WIOA. The Departments estimate the costs for this new requirement to coordinate among the six core programs in the State plan under (f) Unified or Combined State Plan and (g) Local Plan Revisions. WIOA requires more substantial labor market information (LMI) data be included in the State Plan than was required under WIA. This is a cost that DOL estimates will impact the State level DOL core programs because the State typically provides the LMI data to local areas for the formulation of the local plan. Furthermore, WIOA will allow States to use existing data for their initial State Plan, so the additional cost will be offset substantially for the first State Plan required. For the required modification of State Plans and any subsequent State Plan under WIOA, the State will incur this cost to include substantial LMI data.

For State-level DOL programs, the Departments estimated this cost by first multiplying the estimated number of technical staff per State (2) by the time required to review and revise the State Plan (16 hours) and the hourly compensation rate. We performed the same calculation for administrative staff (1 staff for 16 hours). Summing the labor cost for both categories ($2,597) and multiplying the result by the number of States (56) results in an annual cost of $145,435.

The sum of these costs yields a total 10-year cost of $53,923,423, or an average annual cost of $5,392,342, for individuals from the State and local level for all core programs to review and revise State and local plans to ensure they include the new elements.

c. Development and Updating of State Performance Accountability Measures

WIOA sec. 116 establishes performance accountability indicators and performance reporting requirements to assess the effectiveness of States and local areas in achieving positive outcomes for individuals served by the core programs. The core programs are defined in WIOA sec. 116(b)(3)(A)(ii) to include the adult, dislocated worker, and youth programs under title I of WIOA, the AEFLA program under WIOA title II, the Wagner-Peyser program under the Wagner-Peyser Act as amended by WIOA title III, and the VR program under the Rehabilitation Act of 1973 as amended by WIOA title IV. With a few exceptions, including the local accountability system under WIOA sec. 116(c), the performance accountability requirements apply across all the core programs.

Costs

At the State level for DOL programs, the Departments estimated this labor cost by first multiplying the estimated average number of managers per State (1) by the time required to develop and update metrics and other accountability measures (32 hours) and the hourly compensation rate. We performed the same calculation for the technical (3 staff for 80 hours)

and administrative staff (1 staff for 32 hours). We summed the labor cost for all three categories ($19,276) and multiplied the result by the number of States to estimate this annual cost of $1,079,459, or a total cost of $10,794,587 over the 10-year period.

The Departments estimated the software and IT system cost for State-level DOL programs by multiplying the software and IT system cost ($100,000) by the number of States. This calculation yields an annual cost of $5,600,000 or a total cost of $56,000,000 over the 10-year period.

The Departments estimated the licensing fee costs for State-level DOL programs by multiplying the licensing fee costs ($50,000) by the number of States. This calculation yields an annual cost of $2,800,000 or a total cost of $28,000,000 over the 10-year period.

The Departments estimated the consultant cost for State-level DOL programs by multiplying the consultant cost ($75,000) by the number of States. This calculation yields a one-time cost of $4,200,000, representing an average annual cost of $420,000 over the 10-year period.

At the State level for the AEFLA program, the Departments estimated this labor cost by first multiplying the estimated average number of managers per State (5) by the time required to develop and update metrics and other accountability measures (80 hours) and the hourly compensation rate. We repeated the calculation for the technical staff (2 staff for 80 hours) and administrative staff (5 staff for 80 hours). We summed the labor cost for all three categories ($49,992) and multiplied the result by the number of States to estimate this one-time cost of $2,849,535. Over the 10-year period, this calculation yields an average annual cost of $284,954.

The Departments estimated the consultant cost for the State-level AEFLA program by multiplying the consulting costs per State ($25,000) by the number of States. This calculation

yields a one-time cost of $1,425,000. Over the 10-year period, this calculation yields an average annual cost of $142,500.

At the local level for the AEFLA program, the Departments estimated this cost by first multiplying the estimated average number of managers for all local entities within a State (40) by the time required to participate in statewide stakeholder meetings and other activities to provide input for the development and updating of metrics and other accountability measures (80 hours) and the hourly compensation rate. We performed the same calculation for the technical staff (40 staff for 80 hours). We summed the labor cost for the two occupational categories ($439,952) and multiplied the result by the number of States to estimate this one-time cost of $25,077,264. Over the 10-year period, this calculation yields an average annual cost of $2,507,726.

For State VR agencies, the Departments estimated this cost by first multiplying the estimated number of managers per VR agency (6) by the time required to develop and update metrics and other accountability measures (10 hours) and the hourly compensation rate. We repeated the calculation for the technical staff (4 staff for 10 hours). We summed the labor cost for both categories ($6,904) and multiplied the result by the number of VR agencies to estimate this one-time cost as $552,346.

The sum of these calculations yields a total first year costs of $43,583,603 and a subsequent annual cost of $9,479,459 for individuals from the State and local level for all core programs to develop and update metrics and other accountability measures to assess the effectiveness of the core programs in the State. The estimated total 10-year cost of developing and updating State performance accountability measures is $128,898,731, resulting in average annual cost of $12,889,873.

d. Identification and Dissemination of Best Practices

Under WIOA sec. 101(d)(5), State Boards must assist Governors in the identification and dissemination of best practices, including practices for the effective operation of one-stop centers; the development of effective Local Boards; and the development of effective training programs that respond to real-time labor market analysis and support efficient placement of individuals into employment or career pathways.

Costs

The Departments estimated the labor cost for State WDB staff by multiplying the estimated average number of managers per State (1) by the time required to identify and disseminate information (20 hours) and the hourly compensation rate. We performed the same calculation for the technical staff (2 staff for 40 hours) and administrative staff (1 staff for 20 hours). We summed the labor cost for all three categories ($7,341) and multiplied the result by the number of States that need to develop and disseminate best practices (40) to estimate an average annual cost of $293,632.

This cost is likely a lower bound estimate because we did not include the effort required for the entities that receive the best practices to implement them. The Departments did not have adequate data to estimate this implementation cost and invites the public to submit data sources or estimates for consideration during the final rule stage.

e. Development of Strategies for Aligning Technology and Data Systems across One-stop Partner Programs to Enhance Service Delivery and Improve Efficiencies

Under WIOA sec. 101(d)(8), State Boards must assist Governors in the development of strategies for aligning technology and data systems across one-stop partner programs to enhance service delivery and improve efficiencies in reporting on performance accountability measures,

including design implementation of common intake, data collection, case management information, and performance accountability measurement and reporting processes and the incorporation of local input into such design and implementation to improve coordination of services across one-stop partner programs.

Costs

At the State level for the AEFLA program, the Departments estimated this labor cost by first multiplying the estimated average number of managers per State (5) by the time required to develop strategies (40 hours) and the hourly compensation rate. We performed the same calculation for the technical staff (2 staff for 120 hours) and administrative staff (5 staff for 40 hours). We summed the labor cost for all three categories ($35,754) and multiplied the result by the number of States to estimate a recurring annual cost of $2,037,987.

The Departments estimated the software and IT systems cost for the State-level AEFLA program by multiplying the software and IT systems costs per State ($150,000) by the number of States. This calculation yields an estimated recurring annual cost of $8,550,000.[15]

At the local level for the AEFLA program, the Departments estimated this cost by first multiplying the estimated average number of managers for all local entities within a State (40) by the time required to develop strategies (40 hours) and the hourly compensation rate. We performed the same calculation for the technical staff (40 staff for 120 hours). We summed the labor cost for the two occupational categories ($435,141) and multiplied the result by the number of States to estimate a recurring annual cost of $24,803,026.

[15] The Departments estimated the annual software and IT systems cost of this provision at the State level for the AEFLA program by multiplying the software and IT systems cost per State by the number of States ($150,000 x 57). This yields an average annual cost of $8,550,000.

For State VR agencies, the Departments estimated this cost by first multiplying the estimated number of managers per VR agency (1) by the time required to develop strategies (8 hours) and the hourly compensation rate. We repeated the calculation for the legal staff (1 staff for 4 hours) and technical staff (1 staff for 16 hours). We summed the labor cost for the two categories ($1,890) and multiplied the result by the number of VR agencies to estimate a recurring annual cost of $151,201.

The Departments estimated the labor cost that State WDBs would incur by multiplying the estimated average number of WDB staff per State (1) by the time required to develop strategies (80 hours) and the hourly compensation rate. We repeated the calculation for the technical staff (2 staff for 120 hours). We summed the labor cost for both categories ($21,757) and multiplied the result by the number of States to estimate this one-time cost of $1,218,394.

The sum of these calculations yields a first year cost of $36,760,608 with subsequent annual costs of $35,542,213 for individuals from the State and local level for all core programs to develop strategies for aligning technology and data systems across one-stop partner programs. The estimated total 10-year cost of developing and updating State performance accountability measures is $356,640,528, resulting in average annual cost of $35,664,053.

f. Unified or Combined State Plan

WIOA sec. 102 requires the Governor of each State to submit a Unified or Combined State Plan to the Secretary of the Department of Labor that outlines a 4-year strategy for the State's workforce development system. States must have approved State Plans in place to receive funding for the six core programs under WIOA—the adult, dislocated worker, and youth programs (title I of WIOA); the AEFLA program (title II of WIOA); the Wagner-Peyser Employment Service (Wagner-Peyser Act as amended by title III of WIOA); and the VR

program under title I of the Rehabilitation Act of 1973 (as amended by title IV of WIOA). At a minimum, States must submit a Unified State Plan, which encompasses these six core programs. Although each of the core programs was required to submit State Plans under WIA and, thus, the submission of the plans does not represent an added cost under WIOA, some programs may experience additional costs related to the planning requirements unique to becoming part of a Unified or Combined State Plan under WIOA.

As stated above, WIOA sec. 102 requires, at a minimum, States to submit a Unified State Plan, which encompasses the six core programs under WIOA. Under WIOA sec. 103, States may submit, in the alternative, a Combined State Plan, which includes the six core programs of the Unified State Plan, plus one or more of the optional Combined State Plan programs described in WIOA sec. 103(a)(2).

Costs

At the State level for the AEFLA program, the Departments estimated this labor cost by first multiplying the estimated average number of managers per State (5) by the time required to participate in statewide stakeholder meetings and other activities to develop, review, and revise the State Plan (24 hours) and the hourly compensation rate. We repeated the calculation for the following occupational categories: counsel staff (1 staff for 8 hours), technical staff (2 staff for 24 hours), and administrative staff (5 staff for 16 hours). We summed the labor cost for all four categories ($14,388) and multiplied the result by the number of States to estimate this one-time cost of $820,142.

The Departments estimated the consultant costs for the State-level AEFLA program by multiplying the consultant costs per State ($25,000) by the number of States. This calculation yields a one-time cost of $1,425,000.

At the local level for the AEFLA program, the Departments estimated this cost by first multiplying the estimated average number of managers for all local entities within a State (40) by the time required to participate in statewide stakeholder meetings and other activities to develop, review, and revise a Unified or Combined State plan (24 hours) and the hourly compensation rate. We repeated the calculation for the following occupational categories: counsel staff (3 staff for 8 hours), technical staff (40 staff for 24 hours), administrative staff (40 staff for 16 hours), and local stakeholders (100 stakeholders for 8 hours). We summed the labor cost for the five occupational categories ($217,221) and multiplied the result by the number of States to estimate this one-time cost of $12,381,609.

For DOL's State-level program costs associated with State WDBs, the Departments estimated this labor cost by first multiplying the estimated average number of managers per State (2) by the time required to submit a Unified and Combined State Plan (20 hours) and the hourly compensation rate. We performed the same calculation for the following occupational categories: counsel staff (1 staff for 8 hours), technical staff (4 staff for 20 hours), and administrative staff (1 staff for 8 hours). We summed the labor cost for all four categories ($8,916) and multiplied the result by the number of States to estimate this cost of $499,301 that occurs in 2016 and 2020.

For State VR agencies, the Departments estimated this cost by multiplying the estimated number of managers per VR agency (2) by the time required to engage in the planning process for Unified or Combined State Plans (7 hours) and the hourly compensation rate. We performed the same calculation for the technical staff (2 staff for 7 hours). We summed the labor cost for the two categories ($1,925) and multiplied the result by the number of VR agencies to estimate a recurring annual cost of $153,983.

There is no additional cost to DOL State or local programs associated with this provision because these programs currently submit Unified or Combined State Plans under WIA.

The sum of these calculations yields first year costs of $14,780,735 for individuals from the State and local level for all core programs to comply with this provision, subsequent annual costs of $153,983 for VR State agencies, and a total cost of $998,603 associated with State WDBs for years 2016 and 2020. The estimated total 10-year cost of activities related to the submission of the States Unified or Combined State Plan is $17,165,187, resulting in average annual cost of $1,716,519.

g. Local Plan Revisions

WIOA sec. 108(b) establishes strategic planning and operational elements for local plans. These requirements set the foundation for WIOA principles, by fostering strategic alignment, improving service integration, and ensuring that the workforce system is industry-relevant, responding to the economic needs of the local workforce development area, and matching employers with skilled workers. The previously developed local plans under WIA will have to be revised to address new issues and submitted every 4 years.

Costs

For DOL's local-level program costs associated with local WDBs, the Departments estimated this cost by first multiplying the estimated average number of managers per local WDB (2) by the time required to revise and submit an updated local plan (20) and the hourly compensation rate. We performed the same calculation for the following occupational categories: counsel staff (1 staff for 8 hours), technical staff (4 staff for 20 hours), and administrative staff (1 staff for 8 hours). We summed the labor cost for all four categories

($8,916) and multiplied the result by the number of local WDBs (580) to estimate this cost of $5,171,336, which occurs twice during the analysis period (2016 and 2020).

At the local level for the AEFLA program, the Departments estimated this cost by first multiplying the estimated average number of managers for all local entities within a State (40) by the time required to develop, review, revise, and submit an updated local plan (24 hours) and the hourly compensation rate. We performed the same calculation for the following occupational categories: technical staff (40 staff for 24 hours), administrative staff (40 staff for 16 hours), and local stakeholders (100 stakeholders for 8 hours). We summed the labor cost for all four categories ($215,708) and multiplied the result by the number of States to estimate this one-time cost as $12,295,351.

These particular projected costs pertain solely to locally-administered programs and do not impact the core programs at the State level.

The sum of these calculations yields a total 10-year cost of $22,638,023, which results in an average annual cost of $2,263,802 for individuals from the local WDBs and the local AEFLA programs to revise and submit updated local plans.

h. State Performance Accountability Measures

WIOA sec. 116(b) establishes performance accountability indicators and performance reporting requirements to assess the effectiveness of States and local areas in achieving positive outcomes for individuals served by the core programs. Under that provision, States must include primary indicators of performance in their Unified or Combined State Plans, and may identify additional indicators of performance for the six core programs. These indicators must be included in the Unified or Combined State Plan.

Costs

At the State level for DOL programs, the Departments estimated this labor cost by first multiplying the estimated average number of managers per State (1) by the time required to comply with increased data collection and processing requirements (32 hours) and the hourly compensation rate. We performed the same calculation for the technical staff (3 staff for 80 hours) and administrative staff (1 staff for 32 hours). We summed the labor cost for all three categories ($19,276) and multiplied the result by the number of States to estimate this annual cost of $96,380.

The Departments estimated the software and IT system cost for State-level DOL programs by multiplying the software and IT system cost ($100,000) by the number of States expected to submit data (5). This calculation yields an annual cost of $500,000.

The Departments estimated the licensing fee costs for State-level DOL programs by multiplying the licensing fee costs ($50,000) by the number of States expected to submit data (5). This calculation yields an annual cost of $250,000.

The Departments estimated the consultant cost for State-level DOL programs by multiplying the consultant cost ($75,000) by the number of States expected to submit data. This calculation yields a one-time cost of $375,000.

At the State level for the AEFLA program, the Departments estimated this labor cost by first multiplying the estimated average number of managers per State (5) by the time required to obtain these data (7 hours) and the hourly compensation rate. We performed the same calculation for technical staff (2 staff for 7 hours) and administrative staff (5 staff for 7 hours). We summed the labor cost for all three categories ($4,374) and multiplied the result by the number of States expected to submit additional data to estimate this one-time cost as $21,871.

For State VR agencies, the Departments estimated the cost to obtain quarterly State unemployment insurance wage data by first multiplying the estimated number of managers per VR agency (2) by the time required to obtain these data (20 hours) and the hourly compensation rate. We performed the same calculation for the counsel staff (1 staff for 20 hours) and technical staff (2 staff for 20 hours). We summed the labor cost for all three categories ($6,760) and multiplied the result by the number of VR agencies expected to provide additional information (7) to estimate this one-time cost as $47,323.

For State VR agencies, the Departments estimated the cost to obtain additional information for new data fields by multiplying the estimated number of technical staff per VR agency (60) by the time required to obtain these data (9 hours) and the hourly compensation rate. We multiplied the result ($36,309) by the number of VR agencies expected to provide additional information to estimate this annual cost as $254,163.

The Departments estimated the software and IT costs for State VR agencies to obtain additional information for new data fields by multiplying the software and IT costs ($5,000) by the number of VR agencies expected to provide additional information. This calculation yields a one-time cost of $35,000.

At the local level for the AEFLA program, the Departments estimated this labor cost by multiplying the estimated average number of managers for all local entities within a State (40) by the time required to obtain additional information (7 hours) and the hourly compensation rate. We performed the same calculation for technical staff (40 staff for 7 hours). We summed the labor cost for these categories ($38,496) and multiplied the number of States expected to provide additional information (5) to estimate this one-time cost of $192,479.

The sum of these calculations yields a total 10-year cost of $11,677,110, which results in an average annual cost of $1,167,711 for individuals from the State and local levels for core programs to comply with increased data collection and processing requirements.

i. Performance Reports

Under WIOA sec. 116(d), States must make available performance reports for local areas and for ETPs under title I of the WIOA. WIOA also requires that States cooperate in evaluations of State programs overseen by the Departments of Labor and Education. Section 116(d)(1) of WIOA requires the Departments to provide a performance reporting template for the performance reports required in WIOA secs. 116(d)(2)-(4).

Costs

At the Federal level, the Departments estimated this labor cost by first multiplying the estimated average number of GS-13 Step 5 managers (1) by the time required to develop the reporting template (60 hours) and the hourly compensation rate. We performed the same calculation for the Federal staff labor category (10 staff for 120 hours). We summed the labor cost of these two categories to estimate this one-time cost of $82,870.

At the State level for the AEFLA program, the Departments estimated this labor cost by first multiplying the estimated average number of managers per State (5) by the time required to develop the reporting template (40 hours) and the hourly compensation rate. We performed the same calculation for the technical staff (2 staff for 40 hours) and administrative staff (5 staff for 40 hours). We summed the labor cost for all three categories ($24,996) and multiplied the result by the number of States to estimate this one-time cost of $1,399,772.

The Departments estimated the software and IT system cost for the State-level AEFLA programs by multiplying the software and IT system cost ($1,750,000) by the number of States.

This calculation yields a one-time cost of $99,750,000, resulting in an average annual cost of $9,975,000 over a 10-year period.

The Departments estimated the licensing fees for the State-level AEFLA programs by multiplying the per-State licensing fees ($25,000) by the number of States. This calculation yields a recurring annual cost of $1,425,000.

At the local level for the AEFLA program, the Departments estimated this labor cost by multiplying the estimated average number of managers for all local entities within a State (40) by the time required to participate in statewide stakeholder meetings and other activities to develop, review, and revise the reporting template (40 hours) and the hourly compensation rate. We multiplied the product by the number of States to estimate this one-time cost of $6,406,435.

The sum of these calculations yields a total one-time cost of $107,639,077 for individuals from the Federal, State, and local levels to develop the reporting templates and an annual cost of $1,425,000 for licensing fees. The 10-year total costs result in an average annualized cost of $12,188,908.

j. Evaluation of State Programs

WIOA sec. 116(e)(1) requires States to conduct ongoing evaluations of activities carried out in the State under the core programs. To comply with WIOA sec. 116(e)(4), States must, to the extent practicable, cooperate in the conduct of evaluations (including related research projects) provided for by the Secretary of Labor or the Secretary of Education under the provisions of Federal law identified in WIOA sec. 116(e)(1); WIOA secs. 169 and 242(c)(2)(D); secs. 12(a)(5), 14, and sec. 107 of the Rehabilitation Act of 1973 (29 U.S.C. 709(a)(5), 711, 727) (applied with respect to programs carried out under title I of that Act (29 U.S.C. 720 et seq.));

and the investigations provided for by the Secretary of Labor under sec. 10(b) of the Wagner-Peyser Act (29 U.S.C. 49i(b)).

Costs

At the State level for DOL programs, the Departments estimated this labor cost by first multiplying the estimated average number of managers per State (1) by the time required to evaluate ongoing program activities (20 hours) and the hourly compensation rate. We performed the same calculation for the technical staff (2 staff for 20 hours) and administrative staff (1 staff for 10 hours). We summed the labor cost for all three categories ($4,373) and multiplied the result by the number of States to estimate this annual cost of $244,880.

At the State level for DOL programs, the Departments estimated the software, IT system, and consultant costs for both "low-effort" States, those with either smaller populations or more robust existing IT system infrastructure, and for "high-effort" States with larger populations or limited IT system infrastructure. We first multiplied the software, IT system, and consultant costs for low-effort States ($200,000) by the number of low-effort States (20). We performed the same calculation for high-effort States (15 States at $1,000,000 each). We summed these costs for both State categories to estimate an annual cost of $19,000,000.[16] This estimate represents the cost associated with the proposed joint rule beyond the IT expenditures currently incurred by State workforce agencies.

At the State level for the AEFLA program, the Departments estimated the labor cost by first multiplying the estimated average number of managers per State (5) by the time required to

[16] To estimate the software, IT, and consultant cost of this provision at the State-level for DOL programs, the Departments first estimated the software, IT, and consultant cost for low-effort States by multiplying the non-labor cost per low-effort State by the number of low-effort States ($200,000 x 20 = $4,000,000). We estimated the software, IT, and consultant program cost for high-effort States by multiplying the non-labor cost per high-effort State by the number of high-effort States ($1,000,000 x 15 = $15,000,000). We summed these non-labor costs for low- and high-effort States ($4,000,000 + $15,000,000), yielding an estimated annual software, IT, and consultant cost of $19,000,000.

evaluate ongoing program activities (120 hours) and the hourly compensation rate. We performed the same calculation for the technical staff (2 staff for 80 hours) and administrative staff (5 staff for 80 hours). We summed the labor cost for all three categories ($64,041) and multiplied the result by the number of States to estimate an annual cost of $3,650,339.

At the State level for the AEFLA program, the Departments estimated the software and IT system costs by multiplying the software and IT system costs ($250,000) by the number of States. This calculation yields an annual cost of $14,250,000.[17]

At the local level for the AEFLA program, the Departments estimated this labor cost by first multiplying the estimated average number of managers for all local entities within a State (40) by the time estimated to collect, review, and revise data provided for the evaluation of ongoing program activities (120 hours) and the hourly compensation rate. We performed the same calculation for the technical staff (40 staff for 80 hours) and administrative staff (40 staff for 80 hours). We summed the labor cost for all three categories ($641,427) and multiplied the result by the number of States to estimate an annual cost of $36,561,350.

For State VR agencies, the Departments estimated this labor cost by first multiplying the estimated average number of managers per VR agency (1) by the time estimated to evaluate ongoing program activities (1 hour) and the hourly compensation rate. We performed the same calculation for the technical staff (1 staff for 13 hours) and administrative staff (1 staff for 2 hours). We summed the labor cost for all three categories ($1,000) and multiplied the result by the number of VR agencies to estimate an annual cost of $80,002.

[17] To estimate the software and IT system cost of this provision at the State-level for the AEFLA program, the Departments multiplied the software and IT system cost per State by the number of States ($250,000 x 57). This yields an annual software and IT system cost of $14,250,000.

The sum of these calculations yields a total annual cost of $73,786,572, resulting in a total cost over the 10-year period of $737,865,722, for individuals from the State and local levels for all core programs to evaluate ongoing program activities.

5. Summary of Analysis

Exhibit 3 summarizes the annual and total costs of the proposed joint rule. The exhibit provides the total 10-year costs and the average annualized costs for each provision of the proposed joint rule. The exhibit also presents a high-level description of the benefits resulting from full WIOA implementation for each rule provision. These qualitative forecasts are predicated on program experience and are outcomes for which data will become available only after implementation. The Departments estimate the average annual cost of the proposed joint rule over the 10-year period of analysis at $147.1 million. The largest contributor to this cost is the provision related to the evaluation of State programs, which is estimated at $73.8 million per year. The next largest cost results from the development of strategies for aligning technology and data systems across one-stop partner programs at an estimated $35.7 million per year, followed by the average cost of developing and updating State performance accountability measures at an estimated $12.9 million per year.

EXHIBIT 3: Cost of the Proposed Departments of Education and Labor Joint Rule by Provision				
	Total 10-Year Cost (undiscounted)	**Average Annual Cost (undiscounted)**	**Percent of Total Cost**	**Qualitative Benefit Highlights**
(a) Time to Review the New Rule	$17,650,220	$1,765,022	1.20%	General requirement
(b) New Elements to State and Local Plans	$53,923,423	$5,392,342	3.67%	Enhanced data for management decision-making and policy integration
(c) Development and Updating of State Performance Accountability Measures	$128,898,731	$12,889,873	8.76%	Clear articulation of expectations and outcomes for evaluation and accountability purposes
(d) Identification and Dissemination of Best Practices	$2,936,320	$293,632	0.20%	Mission clarification and system building
(e) Development of Strategies for Aligning Technology and Data Systems across One-stop Partner Programs to Enhance Service Delivery and Improve Efficiencies	$356,640,528	$35,664,053	24.24%	More efficient use of public resources; enhanced customer service; improved program management based on actual client data
(f) Unified or Combined State Plan	$17,165,187	$1,716,519	1.17%	Avoided program service duplication; enhanced internal State planning; avoided "silos" and service duplications; more efficient use of public resources
(g) Local Plan Revisions	$22,638,023	$2,263,802	1.54%	Continued accountability and linkage to outcomes and customer service
(h) State Performance Accountability Measures	$11,677,110	$1,167,711	0.79%	Improved policy and management decision-making from measure data
(i) Performance Reports	$121,889,077	$12,188,908	8.28%	Better management and policy decisions using outcome data; improved service and placements; more accountability
(j) Evaluation of State Programs	$737,865,722	$73,786,572	50.15%	Improved service delivery and customer service; enhanced policy-making and system building; more accountability
TOTAL	**$1,471,284,341**	**$147,128,434**	**100.00%**	

Note: Totals might not sum due to rounding.

Exhibit 4 summarizes the first-year cost for each provision of the proposed joint rule. The Departments estimate the total first-year cost of the proposed joint rule at $320.6 million. The largest contributor to the first-year cost is the provision related to performance report development at $109.1 million. The next largest first-year cost results from evaluating State programs, amounting to $73.8 million, followed by the cost of developing and updating State performance accountability measures at $43.6 million.

EXHIBIT 4: First-Year Cost of the Proposed Joint Rule by Provision		
	Total First-Year Cost	**Percent of Total First-Year Cost**
(a) Time to Review the New Rule	$17,650,220	5.50%
(b) New Elements to State and Local Plans	$10,639,250	3.32%
(c) Development and Updating of State Performance Accountability Measures	$43,583,603	13.59%
(d) Identification and Dissemination of Best Practices	$293,632	0.09%
(e) Development of Strategies for Aligning Technology and Data Systems across One-stop Partner Programs to Enhance Service Delivery and Improve Efficiencies	$36,760,608	11.47%
(f) Unified or Combined State Plan	$14,780,735	4.61%
(g) Local Plan Revisions	$12,295,351	3.83%
(h) State Performance Accountability Measures	$1,772,217	0.55%
(i) Performance Reports	$109,064,077	34.02%
(j) Evaluation of State Programs	$73,786,572	23.01%
TOTAL	**$320,626,265**	**100.00%**

Note: Totals might not sum due to rounding.

Exhibit 5 summarizes the annual and total costs of the proposed joint Departments of Labor and Education rule. The total (undiscounted) cost of the rule sums to $1.5 billion over the 10-year analysis period, which amounts to an average annual cost of $147.1 million per year. In total, the 10-year discounted costs of the proposed rule range from $1.2 billion to $1.3 billion (with 7- and 3-percent discounting, respectively).

To contextualize the cost of the proposed joint rule, the average annual budget for WIA implementation over the past three years for the Departments of Labor and Education combined was $6.4 billion. Thus, the annual additional cost of implementing this proposed rule is between 2.6 percent and 2.7 percent of the current WIA budget (with 3 percent and 7 percent discounting, respectively).

EXHIBIT 5: Monetized Costs of Departments of Labor and Education Proposed Joint Rule (2013 dollars)

Year	Total Costs
2015	$320,626,265
2016	$127,597,475
2017	$132,420,653
2018	$121,926,838
2019	$132,420,653
2020	$127,597,475
2021	$132,420,653
2022	$121,926,838
2023	$132,420,653
2024	$121,926,838
Undiscounted 10-year Total	**$1,471,284,341**
10-year Total with 3% Discounting	**$1,316,646,285**
10-year Total with 7% Discounting	**$1,154,622,032**
10-year Average	**$147,128,434**
Annualized with 3% Discounting	**$154,351,111**
Annualized with 7% Discounting	**$164,392,201**

Note: Totals might not sum due to rounding.

Benefits

The Departments were unable to quantify the benefits associated with the proposed joint rule because of data limitations and a lack of operational (WIOA) data or evaluation findings on the provisions of the proposed joint rule. Thus, the Departments cannot provide monetary estimates of several important benefits to society, including the increased employment opportunities for unemployed or under-employed U.S. workers, enhanced ETP process, and evaluation of State programs. In support of a State's strategic plan and goals, State-conducted evaluation and research of programs would enable each State to test various interventions geared toward State conditions and opportunities. Results from such evaluation and research, if used by States, could improve service quality and effectiveness and, thus, potentially lead to higher employment rates and earnings among participants. Implementing various innovations that have been tested and found effective could also lead to lower unit costs and increased numbers of individuals served within a State. Sharing the findings nationally could lead to new service or management practices that other States could adopt and use to improve participant results, lower unit costs, or increase the number served.

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

The Departments provide a qualitative description of the anticipated WIOA benefits below. These qualitative forecasts are predicated on program experience and are outcomes for which data will only become available after implementation. Although

these studies are largely based on programs and their existing requirements under WIA, they capture the essence of the societal benefits that can be expected from this proposed joint rule.

Training's impact on placement. A recent study found that flexible and innovative training that is closely related to a real and in-demand occupation is associated with better labor market outcomes for training participants. Youth disconnected from work and school can benefit from comprehensive and integrated models of training that combine education, occupational skills, and support services.[18] However, the study noted that evidence for effective employment and training-related programs for youth is less extensive than for adults, and that there are fewer positive findings from evaluations.[19] The WIA youth program remains largely untested.[20] One study found that WIA training services increase placement rates by 4.4 percent among adults and by 5.9 percent among dislocated workers,[21] while another study concluded that placement rates are 3 to 5 percent higher among all training recipients.[22]

Participants in occupational training had a "5 percentage points higher reemployment rate than those who received no training, and reemployment rates were highest among recipients of on-the-job training, a difference of 10 to 11 percentage

---

[18] Department of Labor et. al. "What Works In Job Training: A Synthesis of the Evidence." July 2014.
[19] Ibid.
[20] Decker, Paul T. and Jillian A. Berk. 2011. "Ten Years of the Workforce Investment Act (WIA): Interpreting the Research on WIA and Related Programs." Journal of Policy Analysis and Management 30 (4): 906–926.
[21] Hollenbeck, Kevin, Daniel Schroeder, Christopher T. King, and Wei-Jang Huang. "Net Impact Estimates for Services Provided through the Workforce Investment Act." Washington, DC: U.S. Department of Labor, 2005. Available at http://wdr.doleta.gov/research/keyword.cfm?fuseaction=dsp_puListingDetails&pub_id=2367&mp=y&start=81&sort=7.
[22] Heinrich, Carolyn J., Peter R. Mueser, and Kenneth R. Troske. "Workforce Investment Act Non-Experimental Net Impact Evaluation." Columbia, MD: IMPAQ International, LLC, 2009.

points."[23] However, the study found that training did not correspond to higher employment retention or earnings.[24] A Youth Opportunity Grant Initiative study found that Youth Opportunity was successful at improving outcomes for high-poverty youth. Youth Opportunity also increased the labor-force participation rate overall and for subgroups, including 16- to 19-year-old adolescents, women, African Americans, and in-school youth.[25] DOL-sponsored research found that participants who received core services (often funded by Employment Services) and other services in American Job Centers were more likely to enter and retain employment.[26]

Training's impact on wages. Before enactment of WIA, Job Training Partnership Act services had a modest but statistically significant impact on the earnings of adult participants.[27] WIA training increased participants' quarterly earnings by $660; these impacts persisted beyond 2 years and were largest among women.[28] WIA adult program participants who received core services (e.g., skill assessment, labor market information) or intensive services (e.g., specialized assessments, counseling) earned up to $200 more per quarter than non-WIA participants. Participants who received training services in

---

[23] Park, Jooyoun. "Does Occupational Training by the Trade Adjustment Assistance Program Really Help Reemployment? Success Measured as Matching." Washington, DC: U.S. Department of Labor, Employment and Training Administration, 2011.
[24] Ibid.
[25] Jackson, Russell H., Jamie Diamandopoulos, Carol Pistorino, Paul Zador, John Lopdell, Juanita Lucas-McLean, and Lee Bruno. "Youth Opportunity Grant Initiative (YO)." Houston, TX: Decision Information Resources, Inc., 2008. Available at http://wdr.doleta.gov/research/FullText_Documents/YO%20Impact%20and%20 Synthesis%20Report.pdf.
[26] Office of Policy Development and Research, U.S. Department of Labor. "Five-Year Research and Evaluation Strategic Plan Program Years 2012-2017." May 2013. Available at http://wdr.doleta.gov/research/keyword.cfm?fuseaction=dsp_resultDetails&pub_id=2516&mp=y.
[27] Barnow, Burt, and Daniel Gubits. "Review of Recent Pilot, Demonstration, Research, and Evaluation Initiatives to Assist in the Implementation of Programs under the Workforce Investment Act." Baltimore, MD: Johns Hopkins University, 2003. Available at http://wdr.doleta.gov/research/keyword.cfm?fuseaction=dsp_pu ListingDetails&pub_id=2365&mp=y&start=81&sort=7.
[28] Ibid.

addition to core and intensive services initially earned less but caught up within 10 quarters with the earnings of participants who only received core or intensive services; marginal benefits of training could exceed $400 per quarter. Earnings progressions were similar for WIA adult program participants and users of the labor exchange only.[29] WIA training services also improved participants' long-term wage rates, doubling earnings after 10 quarters over those not receiving training services.[30] However, WIA participants who did not receive training earned $550 to $700 more in the first quarter after placement. The study also noted that individuals who did not receive training received effective short-term counseling that enabled them to gain an immediate advantage in the labor market.[31]

Another DOL program, the Job Corps program for disadvantaged youth and young adults, produced sustained increases in earnings for participants in their early twenties. Students who completed Job Corps vocational training experienced average earnings increases by the fourth follow-up year over the comparison group, whereas those who did not complete training experienced no increase.[32]

---

[29] Earnings Progression among Workforce Development Participants: Evidence from Washington State." Eugene, OR: University of Oregon, 2011. Available at http://wdr.doleta.gov/research/keyword.cfm?fuseaction=dsp_puListingDetails&pub_id=2468&mp=y&start=1&sort=7.

[30] Heinrich, Carolyn J., Peter R. Mueser, and Kenneth R. Troske. "Workforce Investment Act Non-Experimental Net Impact Evaluation." Columbia, MD: IMPAQ International, LLC, 2009.

[31] Heinrich, Carolyn J., Peter R. Mueser, and Kenneth R. Troske. "Workforce Investment Act Non-Experimental Net Impact Evaluation." Columbia, MD: IMPAQ International, LLC, 2009. Available at http://wdr.doleta.gov/research/FullText_Documents/Workforce%20 Investment%20Act%20Non-Experimental%20Net%20Impact%20Evaluation%20-%20Final%20Report.pdf.

[32] Gritz, Mark, and Terry Johnson. "National Job Corps Study: Assessing Program Effects on Earnings for Students Achieving Key Program Milestones." Seattle, WA: Battelle Memorial Institute, 2001. Available at http://wdr.doleta.gov/research/keyword.cfm?fuseaction=dsp_puListingDetails&pub_id=2257&mp=y&start=141&sort=7.

Another publication also noted that on average, adults experienced a $743 quarterly post-exit earnings boost.[33]

Those who completed training experienced a 15-percent increase in employment rates and an increase in hourly wages of $1.21 relative to participants without training.[34] Participation in WIA training also had a distinct positive, but smaller, impact on employment and earnings, with employment 4.4 percentage points higher and quarterly earnings $660 higher than comparison group members.

National and international studies provided strong evidence for the need for and economic value of adult basic skills. One study shows that not only do individuals who participate in adult basic skills training programs have higher future earnings, but income premiums are higher with more intensive participation. At 100 hours or more, the average treatment effect corresponded to $9,621 in 2013 dollars.[35]

Vocational and adult literacy's education impact. Vocational managers indicate that closely aligning service offerings with labor market reports improves the likelihood that participants will learn applicable skills. The lengthy and involved process of implementing changes to existing programs and developing new programs, however, might delay the benefits derived from improved labor market data.[36]

---

[33] Hollenbeck, Kevin, Daniel Schroeder, Christopher T. King, and Wei-Jang Huang. "Net Impact Estimates for Services Provided through the Workforce Investment Act." Washington, DC: U.S. Department of Labor, 2005. Available at http://wdr.doleta.gov/research/FullText_Documents/Net%20Impact%20Estimates%20for%20Services%20Provided%20through%20the%20Workforce%20Investment%20Act - %20Final%20Report.pdf.

[34] Needels, Karen, Jeanne Bellotti, Mina Dadgar, and Walter Nicholson. "Evaluation of the Military Base National Emergency Grants: Final Report." Princeton, NJ: Mathematica Policy Research, 2006.

[35] Reder, Stephen. Portland State University. 2013. Briefs available at http://LINCS.ed.gov.

[36] Johnson, Terry, Mark Gritz, Russell Jackson, John Burghardt, Carol Boussy, Jan Leonard, and Carlyn Orians. "National Job Corps Study: Report on the Process Analysis." Princeton, NJ: Mathematica Policy Research, 1999. Available at http://wdr.doleta.gov/research/keyword.cfm?fuseaction=dsp_puListingDetails&pub_id=2213&mp=y&start=201&sort=7.

Studies examining the impact of participation on literacy proficiency determined that individuals who participated in adult basic skills programs tended to have higher levels of future literacy proficiency.[37] Additional studies examined the impact of participation in adult basic skills training on General Education Development credential attainment and concluded that rates were elevated by 0.20 and 0.32 by adult basic skills program participation.[38] Another study found a robust impact of adult basic skills program participation on engagement in post-secondary education. The findings show that the programs increase adult basic skills students' success in the early stages of post-secondary engagement and serve as effective tools for nontraditional student populations.[39]

The following are channels through which these benefits might be achieved:

Better information for workers. The accountability measures would provide workers with higher-quality information about potential training program providers and enable them to make better-informed choices about which programs to pursue. The information analyzed and published by the WDBs about local labor markets also would help trainees and providers target their efforts and develop reasonable expectations about outcomes.

Consumers of educational services, including disadvantaged and displaced workers, require reliable information on the value of different training options to make informed choices. Displaced workers tend to be farther removed from schooling and lack

[37] Reder, Stephen. Portland State University. 2013. Briefs available at http://LINCS.ed.gov.
[38] Ibid.
[39] Ibid.

information about available courses and the fields with the highest economic return.[40] Given these information gaps and financial pressures, it is important that displaced workers learn of the economic returns to various training plans.[41] Still, one study determined that the cost-effectiveness of WIA job training for disadvantaged workers is "modestly positive" due to the limited sample of States on which the research was based.[42]

State performance accountability measures. This requirement would include significant data collection for Local Boards to address performance measures for the core programs in their jurisdictions. This data collection would permit the State WDBs to assess performance across each State. Training providers would be required to provide data to Local Boards, which would represent a cost in the form of increased data collection and processing. Employers and employees also would have to provide information to the training providers, which would take time. This provision, in combination with the Board membership provision requiring employer/business representation, is expected to improve the quality of local training and, ultimately, the number and caliber of job placements.

---

[40] Greenstone, Michael, and Adam Looney. "Building America's Job Skills with Effective Workforce Programs: A Training Strategy to Raise Wages and Increase Work Opportunities." Washington, DC: Brookings Institution, 2011.

[41] Jacobson, Louis, Robert LaLonde, and Daniel Sullivan. "Policies to reduce high-tenured displaced workers' earnings losses through retraining." Discussion Paper 2011-11, The Hamilton Project, Brookings Institution, Washington, DC, 2011.

[42] Heinrich, Carolyn J., Peter R. Mueser, Kenneth R. Troske, Kyung-Seong Jeon, Daver C. Kahvecioglu. 2009 (November). "New Estimates of Public Employment and Training Program Net Impacts: A Nonexperimental Evaluation of the Workforce Investment Act Program." Discussion Paper 4569, Institute for the Study of Labor (IZA), Bonn, Germany.

Implementation of follow-up measures, rather than termination-based measures, might improve long-term labor market outcomes, although some could divert resources from training activities.[43]

Before-after earning metrics capture the contribution of training to earnings potential and minimize incentives to select only training participants with high initial earnings.[44] The study found that value added net of social cost is one objective that is too difficult to measure on a regular basis. With the exception of programs in a few States, current incentives do not reward enrollment of the least advantaged.[45] In addition, the study noted evidence that the performance-standards can be "gamed" in an attempt to maximize their centers' measured performance.[46]

Pressure to meet performance levels could lead providers to focus on offering services to participants most likely to succeed. For example, current accountability measures might create incentives for training providers to screen participants for motivation, delay participation for those needing significant improvement, or discourage participation by those with high existing wages.[47]

The following subsections present additional channels by which economic benefits may be associated with various aspects of the proposed joint rule.

Dislocated workers. A study found that for dislocated workers, receiving WIA services significantly increased employment rates by 13.5 percent and boosted post-exit

[43] Courty, Pascal, and Gerald Marschke. "Making Government Accountable: Lessons from a Federal Job Training Program." Public Administration Review 67.5 (2007): 904–916.
[44] Heckman, James J., Carolyn Heinrich, and Jeffrey A. Smith. 1997. "Assessing the Performance of Performance Standards in Public Bureaucracies." American Economic Review 87(2): 389–95.
[45] Ibid.
[46] Ibid.
[47] Dunham, Kate, Melissa Mack, Jeff Salzman, and Andrew Wiegand. "Evaluation of the WIA Performance Measurement System: Survey Report." Oakland, CA: SPR Associates, 2005. Available at http://wdr.doleta.gov/research/keyword.cfm?fuseaction=dsp_puListingDetails&pub_id=2408&mp=y&start=41&sort=7.

quarterly earnings by $951.[48] However, another study found that training in the WIA dislocated worker program had a net benefit close to zero or even negative.[49]

Self-employed individuals. Job seekers who received self-employment services started businesses sooner and had longer lasting businesses than nonparticipants. Self-employment assistance participants were 19 times more likely to be self-employed than nonparticipants and expressed high levels of satisfaction with self-employment. A study of Maine, New Jersey, and New York programs found that participants were four times more likely to obtain employment of any kind than nonparticipants.[50]

Workers with disabilities. A study of individuals with disabilities enrolled in training for a broad array of occupations (including wastewater treatment, auto body repair, meat cutter/wrapper, clerical support staff, surgical tools technician, and veterinary assistant) found that the mean hourly wage and hours worked per quarter for program graduates were higher than for individuals who did not complete the program. In conclusion, after a review of the quantitative and qualitative analysis of the impacts of this NPRM, the Departments have determined that the societal benefits justify the anticipated costs.

Transfers

---

[48] Hollenbeck, Kevin, Daniel Schroeder, Christopher T. King, and Wei-Jang Huang. "Net Impact Estimates for Services Provided through the Workforce Investment Act." Washington, DC: U.S. Department of Labor, 2005. Available at http://wdr.doleta.gov/research/FullText_Documents/Net%20Impact%20Estimates%20for%20Services%20Provided%20through%20the%20Workforce%20Investment%20Act---%20Final%20Report.pdf.

[49] Heinrich, Carolyn J., Peter R. Mueser, and Kenneth R. Troske. "Workforce Investment Act Non-Experimental Net Impact Evaluation." Columbia, MD: IMPAQ International, LLC, 2009. Available at http://wdr.doleta.gov/research/keyword.cfm?fuseaction=dsp_puListingDetails&pub_id=2419&mp=y&start=41&sort=7.

[50] Kosanovich, William, Heather Fleck, Berwood Yost, Wendy Armon, and Sandra Siliezar. "Comprehensive Assessment of Self-Employment Assistance Programs." Arlington, VA: DTI Associates, 2002. Available at http://wdr.doleta.gov/research/keyword.cfm?fuseaction=dsp_puListingDetails&pub_id=2293&mp=y&start=121&sort=7.

The Reemployment and Eligibility Assessment program was effective in assisting claimants to exit the unemployment insurance program and avoid exhausting regular unemployment insurance benefits in Florida, Idaho, and Nevada. By avoiding unemployment insurance benefit exhaustion, the program led to reductions in the likelihood of receiving Extended Unemployment Compensation benefits. There exists notable evidence that the Reemployment and Eligibility Assessment program is cost-effective.[51] The program reduced unemployment insurance payments and increased tax revenue resulting from increased worker earnings.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 603, requires agencies to prepare a regulatory flexibility analysis to determine whether a regulation will have a significant economic impact on a substantial number of small entities. Section 605 of the RFA allows an agency to certify a rule in lieu of preparing an analysis if the regulation is not expected to have a significant economic impact on a substantial number of small entities. Further, under the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C 801 (SBREFA), an agency is required to produce compliance guidance for small entities if the rule has a significant economic impact.

The Small Business Administration (SBA) defines a small business as one that is "independently owned and operated and which is not dominant in its field of operation." The definition of small business varies from industry to industry to the extent necessary to reflect industry size differences properly. An agency must either use the SBA

[51] Poe-Yamagata, Eileen, Jacob Benus, Nicholas Bill, Hugh Carrington, Marios Michaelides, and Ted Shen. "Impact of the Reemployment and Eligibility Assessment (REA) Initiative." IMPAQ International, 2011. Available at http://wdr.doleta.gov/research/keyword.cfm?fuseaction=dsp_puListingDetails&pub_id=2487&mp=y&start=21&sort=7.

definition for a small entity or establish an alternative definition, in this instance, for the workforce industry. The Departments have adopted the SBA definition for purposes of this certification.

The Departments have notified the Chief Counsel for Advocacy, SBA, under the RFA at 5 U.S.C. 605(b), and proposes to certify that this rule will not have a significant economic impact on a substantial number of small entities. This finding is supported, in very large measure, by the fact that small entities are already receiving financial assistance under the WIA program and will likely continue to do so under the WIOA program as articulated in this NPRM.

Affected Small Entities

The proposed rule can be expected to impact small one-stop center operators. One-stop operators can be a single entity (public, private, or nonprofit) or a consortium of entities. The types of entities that might be a one-stop operator include: (1) an institution of higher education; (2) an employment service State agency established under the Wagner-Peyser Act; (3) a community-based organization, nonprofit organization, or workforce intermediary; (4) a private for-profit entity; (5) a government agency; (6) a Local Board, with the approval of the chief local elected official and the Governor; or (7) another interested organization or entity that can carry out the duties of the one-stop operator. Examples include a local chamber of commerce or other business organization, or a labor organization.

The proposed joint rule can also be expected to impact a variety of AEFLA local providers: (1) local education agencies; (2) community-based organizations; (3) faith-based organizations; (4) libraries; community, junior, and technical colleges; (5) 4-year

colleges and universities; (6) correctional institutions; and (7) other institutions, such as medical and special institutions not designed for criminal offenders.[52]

Impact on Small Entities

The Departments indicate that transfer payments are a significant aspect of this analysis in that the majority of WIOA program cost burdens on State and Local WDBs will be fully financed through Federal transfer payments to States. The Departments have highlighted costs that are new to WIOA implementation and this NPRM. Therefore, the Departments expect that the WIOA joint NPRM will have no cost impact on small entities.

C. Small Business Regulatory Enforcement Fairness Act of 1996

The Departments have determined that this proposed joint rulemaking does not impose a significant economic impact on a substantial number of small entities under the RFA; therefore, the Departments are not required to produce any Compliance Guides for Small Entities, as mandated by the SBREFA.

D. Paperwork Reduction Act

The purposes of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq., include minimizing the paperwork burden on affected entities. The PRA requires certain actions before an agency can adopt or revise a collection of information, including publishing for public comment a summary of the collection of information and a brief description of the need for and proposed use of the information.

As part of continuing efforts to reduce paperwork and respondent burden, the Departments conduct preclearance consultation activities to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing

[52] In terms of VR grantees, they are State government entities and, by definition, are not small entities.

collections of information in accordance with the PRA. See 44 U.S.C. 3506(c)(2)(A). This activity helps to ensure that: (1) the public understands the collection instructions; (2) respondents can provide the requested data in the desired format; (3) reporting burden (time and financial resources) is minimized; (4) respondents clearly understand the collection instruments; and (5) the Departments can properly assess the impact of collection requirements on respondents. Furthermore, the PRA requires all Federal agencies to analyze proposed regulations for potential time burdens on the regulated community created by provisions in the proposed regulations, which require the submission of information. The information collection requirements must also be submitted to the OMB for approval.

The Departments note that a Federal agency may not conduct or sponsor a collection of information unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. The public is also not required to respond to a collection of information unless it displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person will be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB Control Number (44 U.S.C. 3512).

The information collections in this joint NPRM are summarized in the section-by-section discussion of this NPRM, Section IV. The table below captures the current and proposed burden hours associated with the information collections.

Current and Proposed Information Collection Burdens

OMB Approval No.	Annual Burden hours Currently Approved	Annual Burden hours Proposed for new requirements under WIOA	Change
1205-0420 – WIOA Common Performance Management and Information and Reporting for Core Programs	0	2,351,905	2,351,905 *
1205-4NEW – Required Elements for Submission of the Unified or Combined State Plan and Plan Modifications under the Workforce Innovation and Opportunity Act	0	3,279	3,279**
Total	0	2,355,184	2,355,184

* OMB 1205-0420 will be the information collection for the common performance accountability data collected under sec. 116 of WIOA. Hours associated with this information collection represent the burden associated with reporting the new common performance data elements by the core programs. Burden hours associated with program-specific reporting for each of the core programs, which are currently approved and will continue in addition to the common performance reporting, will be reported and summarized in other NPRMs published elsewhere in this Federal Register. The currently-approved program-specific data reporting that will continue, as applicable, for the core programs include:

- Control Number 1205-0420, Workforce Investment Act Management Information and Reporting System, with an annual burden of 508,589;
- Control Number 1205-0240, Labor Exchange Reporting System, with an annual burden of 568,192;

- Control Number 1830-0027, Measures and Methods for the National Reporting System for Adult Education, with an annual burden of 5,700; and
- Control Number 1820-0508, RSA-911 Case Service Report, with an annual burden of 6,500.

The Departments anticipate that the above collections may be phased out or modified, as appropriate, as the WIOA performance measures are fully implemented.

The above-described currently-approved reporting burdens are presented here in order to provide respondents full transparency of the complete reporting burden that is imposed by WIOA, both in terms of the new common performance data elements as well as program-specific reporting requirements. However, to be clear, the net new burden as listed in the table above only reflects the additional burden imposed by the new common performance reporting requirements, set forth at sec. 116 of WIOA, that are applicable to all core programs.

** OMB 1205-4NEW is the information collection for the submission of the Unified or Combined State Plan under secs. 102 and 103 of WIOA, which will replace the following currently-approved State Plan collections for the core programs:

- Control Number 1205-0398, Planning Guidance and Instructions for Submission of the Strategic State Plan and Plan Modifications for Title I of the Workforce Investment Act and Wagner-Peyser Act, with an annual burden of 2,280;
- Control Number 1830-0026, Adult Education and Family Literacy Act State Plan, with an annual burden of 2,565; and

- Control Number 1820-0500, 1820-0500, State Plan for the Vocational Rehabilitation Services Program and Supplement for the Supported Employment Services Program (now referred under WIOA as the VR services portion of the Unified or Combined State Plan), with an annual burden of 2,000.

In an effort to give full meaning to the requirement that States submit a Unified or Combined State Plan, the Departments propose to consolidate all currently-approved program-specific State Plan submissions for each of the core programs into one information collection instrument. To that end, the total burden hours associated with this proposed new consolidated information collection is the sum of the additional burden required to satisfy the integrated strategic and operational planning requirements (see table above) plus the currently-approved requirements (see bullets above). However, to be clear, the net additional burden to respondents is only that associated with the new planning requirements.

Agency: DOL-ETA.

Title of Collection: WIOA Common Performance Management and Information and Reporting for Core Programs

OMB Control Number: 1205-0420.

Description: This new information collection will collect common performance data required under sec. 116 of WIOA from all core programs, including WIOA adult and dislocated workers, youth, Wagner-Peyser, Adult Education and Literacy, Eligible Training Providers, and Vocational Rehabilitation Services programs. The Departments of Education and Labor will use a common approach to standardize the quarterly, as

appropriate, and annual reporting of common data elements for all core programs and Eligible Training Providers. These data are in addition to other performance data reported by each of the core programs under current and proposed regulations discussed in program-specific NPRMs available elsewhere in this Federal Register.

Affected Public: State, local and tribal governments, private sector.

Obligation to Respond: Required to obtain or retain benefits (WIOA sec. 116).

Total Estimated Number of Respondents Annually: 53 for DOL programs, 80 for RSA, 57 for OCTAE (no additional respondents resulting from this proposed rulemaking).

Total Estimated Number of Annual Responses: 722 – each DOL and RSA respondent reports 5 times per year (quarterly plus annually); and each OCTAE respondent reports only annually (no additional responses resulting from this proposed rulemaking).

Total Estimated Annual Time Burden: 2,351,905 hours. This includes hours estimated for both collecting the information and reporting.

Total Estimated Annual Other Costs Burden: $0 (no change as a result of this proposed rulemaking).

Proposed Regulations Containing Information Collections Approved Under this Control Number: 20 CFR part 680 (Adult, Dislocated Workers, and Eligible Training Providers); 20 CFR part 681 (Youth); 20 CFR part 652 (Wagner-Peyser); 34 CFR parts 462 and 463 (Office of Career, Technical, and Adult Education); and 34 CFR part 361 (Rehabilitation Services Administration).

Title of Collection: Required Elements for Submission of the Unified or Combined State Plan and Plan Modifications under the Workforce Innovation and Opportunity Act: Wagner-Peyser and WIOA Title I programs (Department of Labor) and Vocational Rehabilitation and Adult Education programs (Department of Education).

OMB Control Number: 1205-4NEW.

Description: The proposed rule would require each State (which includes applicable outlying areas) to submit a Unified or Combined State Plan that fosters strategic alignment of the core programs, which include the title I adult, dislocated worker, and youth programs; title II adult education and literacy programs; the Wagner-Peyser program as amended by title III of WIOA; and the title IV Vocational Rehabilitation program. The Unified or Combined State Plan requirements improve service integration and ensure that the workforce system is industry-relevant and responds to the economic needs of the State and matches employers with skilled workers. The Unified or Combined State Plan would describe how the State will develop and implement a unified, integrated service delivery system rather than separately discuss the State's approach to operating each core program individually. This consolidated information collection implements secs. 102 and 103 of WIOA. The Unified or Combined State Plan would replace the planning requirements collected under the currently-approved program-specific State Plan information collections.

While each State, at a minimum, must submit a Unified State Plan covering all core programs, sec. 103 of WIOA permits a State to submit a Combined State Plan that would include the core programs plus one or more additional Federal programs listed in sec. 103(b). If the State chooses to include these programs, the Combined Plan will

include all of the common planning elements included in the Unified State Plan, and an additional element describing how the State will coordinate the additional programs with the core programs (WIOA sec. 103(b)(3)).

As with the Unified State Plan collection for the core programs described above, the total burden associated with the Combined State Plan would represent the total burden for the new (additional) WIOA planning requirements (as described in the table above), plus an additional 0.25 hours per Combined State Plan to account for the one additional new question that will be included in Combined State Plans. The burden required for fulfilling the program-specific State Plan requirements (for the non-core additional programs that may be included in the Combined State Plan) will continue to be separately accounted for under the non-core programs' existing, approved Information Collections. Those existing Information Collections are described in the table below for reference:

Additional Program Control Number	**Approved Burden Hours**
Control Number 1830-0029, Carl D. Perkins Career and Technical Education Improvement Act of 2006 (P.L. 109-270) State Plan Guide	2,240 hours
Control Number 0970-0145, Temporary Assistance for Needy Families (TANF) State Plan Guidance	594 hours
Control Number 0584-0083, Supplemental Nutrition Assistance Program Operating Guidelines, Forms, and Waivers, Program and Budget Summary Statement	1431 hours
Control Number 1225-0086, Grant Application Requirements for the Jobs for Veteran State Grants Program	1620 hours
Control Number 1205-0132, Unemployment	1530 hours

Insurance State Quality Service Plan Planning and Reporting Guidelines	
Control Number 1205-0040, Senior Community Service Employment Program Performance Measurement System	406 hours
Control Number 0970-0382, Community Services Block Grant (CSBG) Program Model Plan Applications	112 hours

The table does not include the additional programs that may be part of a Combined State Plan but do not have currently-approved planning requirements of their own, such as the Housing and Urban Development Employment and Training Programs and the Trade Adjustment Assistance Program. Because these programs do not have currently-approved planning collections, the additional burden hours would be the total additional burden associated with the new unified planning requirements set forth in the table above that would be true for any program included in the Unified or Combined State Plan.

Affected Public: State, local and tribal governments.

Obligation to Respond: Required to obtain or maintain benefits (WIOA, secs. 102 and 103).

Total Estimated Number of Respondents Annually: 38. (This is the annualized number of respondents.) Fifty-seven jurisdictions submit a plan the first year and all 57 are required to submit an update in the third year of the planning cycle. No submissions are required the second year. This is the same as the current planning documents. (No additional respondents resulting from this proposed rulemaking.)

Total Estimated Number of Annual Responses: 38 (Annualized as described above; no additional responses resulting from this proposed rulemaking).

Total Estimated Annual Time Burden: 3,279. This number includes the hours for all the jurisdictions to submit a Unified State Plan, plus an additional 0.25 hours for each respondent submitting a Combined State Plan. We estimate that 10 respondents will submit a Combined State Plan. It also includes the estimate that all respondents will submit an update in the third planning year, which is estimated to require a third of the hours compared to submitting the initial plan. Then the number has been annualized over 3 years.

Total Estimated Annual Other Costs Burden: $0 (no change as a result of this proposed rulemaking).

Proposed Regulations Containing Information Collections Approved Under this Control Number: DOL programs – 20 CFR 652.211, 653.107(d), 653.109(d), 676.105, 676.110, 676.115, 676.120, 676.135, 676,140, 676.145, 677.230, 678.310, 678.405, 678.750(a), 681.400(a)(1), 681.410(b)(2), 682.100, 683.115. Department of Education programs – 34 CFR parts 361, 462 and 463.

Interested parties may obtain a copy free of charge of one or more of the information collection requests submitted to the OMB on the reginfo.gov Web site at http://www.reginfo.gov/public/do/PRAMain. From the Information Collection Review tab, select Information Collection Review. Then select the applicable Department (e.g., Department of Education or Department of Labor) from the Currently Under Review dropdown menu, and lookup the Control Number. A free copy of the requests may also be obtained by contacting the person named in the ADDRESSES section of this preamble.

As noted in the ADDRESSES section of this joint NPRM, interested parties may send comments about the information collections to the applicable Department throughout the 60-day comment period and/or to the OMB within 30 days of publication of this notice in the Federal Register. In order to help ensure appropriate consideration, comments should mention the applicable OMB Control Number(s). The Departments and OMB are particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Departments, including whether the information will have practical utility;
- Evaluate the accuracy of the Departments' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The Departments note that in order to meet WIOA requirements, the information collections mentioned in this NPRM need to be in place prior to the final rule taking effect. The Departments will follow PRA requirements in clearing the collections (emergency procedures, as appropriate), including providing appropriate public engagement and taking into account the comments received as part of this rulemaking.

E. Executive Order 13132 (Federalism)

E.O. 13132 requires Federal agencies to ensure that the principles of Federalism established by the Framers of our Constitution guide the executive departments and agencies in the formulation and implementation of policies and to further the policies of the Unfunded Mandates Reform Act. Further, agencies must strictly adhere to constitutional principles. Agencies must closely examine the constitutional and statutory authority supporting any action that would limit the policy-making discretion of the States and they must carefully assess the necessity for any such action. To the extent practicable, State and local officials must be consulted before any such action is implemented. Section 3(b) of the E.O. further provides that Federal agencies must implement regulations that have a substantial direct effect only if statutory authority permits the regulation and it is of national significance. The Departments have reviewed the WIOA joint NPRM in light of these requirements and have determined that, with the enactment of WIOA and its clear requirement to publish national implementing regulations, E.O. sec. 3(b) has been fully reviewed and its requirement satisfied.

Accordingly, the Departments have reviewed this WIOA-required joint NPRM and have determined that the proposed rulemaking has no Federalism implications. The proposed joint rule, as noted above, has no substantial direct effects on States, on the relationships between the States, or on the distribution of power and responsibilities among the various levels of government as described by E.O. 13132. Therefore, the Departments have determined that this proposed rule does not have a sufficient Federalism implication to warrant the preparation of a summary impact statement.

F. Unfunded Mandates Reform Act of 1995

This Act directs agencies to assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector. A Federal mandate is any provision in a regulation that imposes an enforceable duty upon State, local, or tribal governments, or imposes a duty upon the private sector that is not voluntary.

WIOA contains specific language supporting employment and training activities for Indian, Alaska Natives, and Native Hawaiian individuals. These program requirements are supported, as is the WIOA workforce development system generally, by Federal formula grant funds and are accordingly not considered unfunded mandates. Similarly, Migrant and Seasonal Farmworker activities are authorized and funded under the WIOA program as is currently done under the WIA program. The States are mandated to perform certain activities for the Federal government under WIOA and will be reimbursed (grant funding) for the resources required to perform those activities. The same process and grant relationship exists between States and Local WDBs under the WIA program and must continue under the WIOA program as identified in this NPRM.

WIOA contains language establishing procedures regarding the eligibility of training providers to receive funds under the WIOA program and also contains clear State information collection requirements for training entities (e.g., submission of appropriate, accurate, and timely information). A decision by a private training entity to participate as a provider under the WIOA program is purely voluntary and, therefore, information collection burdens do not impose a duty on the private sector that is not voluntarily assumed.

The Departments following consideration of these factors have determined that this proposed joint rule contains no unfunded Federal mandates, which are defined in 2 U.S.C. 658(6) to include either a "Federal intergovernmental mandate" or a "Federal private sector mandate."

G. Plain Language

The Departments drafted this joint NPRM in plain language.

H. Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681) requires the assessment of the impact of this proposed rule on family well-being. A rule that is determined to have a negative effect on families must be supported with an adequate rationale. The Departments have assessed this proposed joint rule in light of this requirement and determined that the joint NPRM would not have a negative effect on families.

I. Executive Order 13175 (Indian Tribal Governments)

The Departments reviewed this proposed joint rule under the terms of E.O. 13175 and have determined it would have no tribal implications in addition to those created through the reimbursement of WIA and future WIOA program expenses via Federally disbursed formula grant funds. However, the proposed joint rule would have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. As a result, a tribal summary impact statement has been prepared.

Prior to developing the proposed joint rule, the Department of Labor held three events to talk with the tribal institutions about their concerns about the current state of Indian and Native American Programs (INAP) as well as what concerns they see in the future. These three events consisted of a consultation webinar and two in-person town hall meetings. The consultation webinar, entitled "Listening session on Indian and Native American Programs," occurred on September 15, 2014. Two other consultations were held, including an October 21, 2014, town hall meeting with Indian and Native American (INA) leaders and membership organizations serving Indians and Native Americans, Hawaiians, and Alaskan Natives, and a formal consultation December 17, 2014, with members of the Native American Employment and Training Advisory Council to the Secretary of Labor.

The Department of Labor received feedback from the INA community and the public that established several areas of interest concerning the Department of Labor's relationship with INA Tribes and tribal governments. These areas of interest are summarized below.

Services received in American Job Centers:

Specifically, the INA community expressed interest in learning how American Job Centers will account for the use of their INA funding dollars and how to ensure that the funds intended for the INA population will be dedicated to that population. In addition, several individuals expressed concerns that INA individuals that enter an American Job Center may not get the general assistance that is intended for all people that seek assistance. In other words, several commenters wanted to ensure that INA individuals should receive assistance intended for other populations for which they may

qualify when seeking service. Finally, several commenters were interested in learning more about how INA programs may be required to contribute to American Job Center infrastructure funding and how American Job Centers will account for INA members served to ensure that the American Job Center network is responding to the relevant INA population needs.

Funding per participant was low for INA programs especially when compared to other job training programs:

Many commenters expressed concern that the funds made available on a per-participant basis for INA programs were not sufficient to meet the needs of the populations being served. Specifically, many commenters stated that funds available for INA youth are inadequate to fully meet their needs. In addition, commenters felt that more funds were needed for INA job training programs to ensure that career pathway training could be carried out. Several commenters compared the cost per participant funding for other programs, such as Job Corps, as evidence of the lack of funding for INA programs. The commenters went on to request a comparison of other WIA-funded programs and the INA programs. Finally, one commenter felt that because of the lack of funds, INA youth were being served instead of INA adults.

The majority of comments focused on the use of new funding streams and the requirements attached to those funds. Commenters expressed concern about the issue of using and transferring WIOA funding to support activities under Indian Employment, Training, and Related Services Demonstration Act of 1992, as amended (Pub. L. 102-477). Specifically, commenters talked about the importance of flexibility in adherence to the requirements because Pub. L. 102-477 programs are tribal programs, may be located

in rural areas, and have been effectively and efficiently reporting through existing processes, including a single reporting feature in the annual report. Additionally, commenters suggested that vocational rehabilitation, adult education reentry, and other applicable job/education-related program funding also should be allowed to support Pub. L. 102-477 programs. Clarity around which funding streams are allowable also was suggested. Commenters also expressed hope that the Department of Education will integrate Carl D. Perkins funding under Pub. L. 102-477 which allows Federally-recognized Tribes and Alaska Native entities to combine formula-funded Federal grant funds administered by the Department of Interior, which are employment and training-related into a single plan with a single budget and a single reporting system. Commenters noted that the Native American Career and Technical Education Program (NACTEP) is a required partner and that NACTEP has limited the partner funds available to fund supportive services and work experiences. One commenter asked if statutory language regarding key investments in vulnerable populations would result in an increase in funding for Division of Indian and Native American Programs (DINAP) programs. Lastly, it was suggested that the 166 Advisory Council continue, and DINAP programs continue to be staffed with Native Americans and Native American Chiefs.

Concerns about the effects of the new performance reporting requirements established in WIOA on the INA community:

Many commenters expressed concern that INA programs would not be able to meet the performance reporting requirements established by WIOA for several reasons, including limited funds to train individuals for the new performance standards and the need to purchase new technology and equipment to meet the reporting requirements. In

addition, several commenters said that INA programs will have to be more selective in determining eligibility for training programs because of insufficient funding and the increased focus on performance outcomes.

Lack of funding to hire and effectively train staff and ensuring policy is responsive to INA community needs:

Commenters stated concerns that INA programs will not be able to achieve expected performance levels because they lacked funding to adequately staff programs. Several commenters stated concerns about the limited number of staff, increased training needs for staff, and the need to ensure that technical assistance is made available to staff. Specifically, commenters are concerned that INA programs may transition slower than States to the new WIOA requirements because of funding and staff needs. In addition, they stated that INA programs need more funds to implement new administrative tasks as well as provide services to the INA community.

Working with States and other programs:

Commenters expressed concerns about States' accountability to the INA community and how to make other training programs administered by the State work comprehensively with INA programs. Others encouraged flexibility and freedom in funding in working with these same entities and lauded this flexibility as a way to get more out of funds. Furthermore, the commenters emphasized how important it is for INA leaders to have a voice in the policy and guidance formulation process so that policy is directly responsive to the needs and funding has to go hand in hand with the needs identified. Some commenters suggested an ongoing dialogue between INA leaders, Workforce Investment Boards, local and State agencies, and the American Job Centers to

discuss training and education that leads to jobs. Some commenters asserted that State-run programs need to be more accountable for how they interact with INA populations. Other commenters expressed frustration that some State programs do not see a need to work with INA programs because the States think that the INA programs get money from other sources, such as casinos. Many of the commenters said that they wanted better collaboration with State-run programs and increased networking among INA programs and State agencies. Finally, one commenter stated that collaboration between INA programs and the State-run training systems would make services to individuals more efficient because it would prevent "double-dipping" in programs. The Department invites public comment about what can be done to address the areas summarized above.

J. Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Property Rights)

The Departments have determined that this joint NPRM is not subject to E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

K. Executive Order 12988 (Civil Justice Reform)

This WIOA joint NPRM was drafted and reviewed in accordance with E.O. 12988, Civil Justice Reform, and the Departments have determined that the proposed rule will not unduly burden the Federal court system. The proposed WIOA regulations were written to minimize litigation and to the extent feasible, provide a clear legal standard for affected conduct, and have been reviewed carefully to eliminate drafting errors and ambiguities.

L. Executive Order 13211 (Energy Supply)

This joint NPRM was drafted and reviewed in accordance with E.O. 13211, Energy Supply. The Departments have determined the joint NPRM will not have a significant adverse effect on the supply, distribution, or use of energy and is not subject to E.O. 13211.

List of Subjects

20 CFR Parts 676, 677, and 678

Employment, Grant programs – labor.

34 CFR Part 361

Administrative practice and procedure, Grant programs – education, Grant programs – social programs, Reporting and recordkeeping requirements, Vocational rehabilitation.

34 CFR Part 463

Adult education, Grant programs – education, Reporting and recordkeeping requirements.

Department of Labor

Employment and Training Administration

20 CFR Chapter V

For the reasons stated in the preamble, ETA proposes to amend 20 CFR chapter V as follows:

1. Add part 676 to read as follows:

PART 676 – UNIFIED AND COMBINED STATE PLANS UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

Sec.

676.100 What is the purpose of the Unified and Combined State Plans?

676.105 What are the general requirements for the Unified State Plan?

676.110 What are the program-specific requirements in the Unified State Plan for the adult, dislocated worker, and youth workforce investment activities in Workforce Innovation and Opportunity Act title I?

676.115 What are the program-specific requirements in the Unified State Plan for the Adult Education and Literacy Program in Workforce Innovation and Opportunity Act title II?

676.120 What are the program-specific requirements in the Unified State Plan for Wagner-Peyser Act Employment Service programs in title III of the Workforce Innovation and Opportunity Act?

676.125 What are the program-specific requirements in the Unified State Plan for the State Vocational Rehabilitation program in Workforce Innovation and Opportunity Act title IV?
676.130 What is the submission and approval process of the Unified State Plan?
676.135 What are the requirements for modification of the Unified State Plan?
676.140 What are the general requirements for submitting a Combined State Plan?
676.143 What is the submission and approval process of the Combined State Plan?
676.145 What are the requirements for modifications of the Combined State Plan?

Authority: Secs. 503, 102, 103, Pub. L. 113-128, 128 Stat. 1425 (Jul. 22, 2014).

§ 676.100 What is the purpose of the Unified and Combined State Plans?

(a) The Unified and Combined State Plans provide the framework for States to outline a strategic vision of, and goals for, how their workforce development systems will achieve the purposes of Workforce Innovation and Opportunity Act (WIOA).

(b) The Unified and Combined State Plans serve as 4-year action plans to develop, align, and integrate the State's systems and provide a platform to achieve the State's vision and strategic and operational goals. A Unified or Combined State Plan is intended to:

(1) Align, in strategic coordination, the six core programs required in the Unified State Plan pursuant to § 676.105(b), and additional optional programs that may be part of the Combined State Plan pursuant to § 676.140;

(2) Direct investments in economic, education, and workforce training programs to focus on providing relevant education and training to ensure that individuals, including youth and individuals with barriers to employment, have the skills to compete in the job market and that employers have a ready supply of skilled workers;

(3) Apply strategies for job-driven training consistently across Federal programs, and;

(4) Enable economic, education, and workforce partners to build a skilled workforce through innovation in, and alignment of, employment, training, and education programs.

§ 676.105 What are the general requirements for the Unified State Plan?

(a) The Unified State Plan must be submitted in accordance with § 676.130 and joint planning guidelines issued by the Secretary of Labor and the Secretary of Education.

(b) The Governor of each State must submit, in accordance with § 676.130, a Unified or Combined State Plan to the Secretary of Labor to be eligible to receive funding for the workforce development system's six core programs:

(1) The adult, dislocated worker, and youth programs authorized under subtitle B of title I of WIOA and administered by the U.S. Department of Labor;

(2) The Adult Education and Family Literacy Act (AEFLA) program authorized under title II of WIOA and administered by the U.S. Department of Education;

(3) The Wagner-Peyser Act Employment Services programs amended by title III of WIOA and administered by the U.S. Department of Labor; and

(4) The State Vocational Rehabilitation program amended by title IV of WIOA and administered by the U.S. Department of Education.

(c) The Unified State Plan must outline the State's 4-year strategy for the core programs described in paragraph (b) of this section and meet the requirements of sec. 102(b) of WIOA, as explained in the joint planning guidance issued by the Secretary of Labor and the Secretary of Education.

(d) The Unified State Plan must include strategic and operational planning elements to facilitate the development of an aligned, coordinated, and comprehensive workforce development system. The Unified State Plan must include:

(1) Strategic planning elements that describe the State's strategic vision and goals for preparing an educated and skilled workforce under sec. 102(b)(1) of WIOA. The strategic planning elements must be informed by and include an analysis of the State's economic conditions and employer and workforce needs, including education and skill needs.

(2) Strategies for aligning the core programs and optional programs, as well as other resources available to the State, to achieve the strategic vision and goals in accordance with sec. 102(b)(1)(E) of WIOA.

(3) Operational planning elements in accordance with sec. 102(b)(2) of WIOA that support the strategies for aligning the core programs and other resources available to the State to achieve the State's vision and goals and a description of how the State Workforce Development Board will implement its functions, in accordance with sec. 101(d) of WIOA. Operational planning elements must include:

(i) A description of how the State strategy will be implemented by each core program's lead State agency;

(ii) State operating systems, including data systems, and policies that will support the implementation of the State's strategy identified in paragraph (d)(1) of this section;

(iii) Program-specific requirements for the core programs required by WIOA sec. 102(b)(2)(D);

(iv) Assurances required by sec. 102(b)(2)(E) of WIOA and others deemed necessary by the Secretaries of Labor and Education under sec. 102(b)(2)(E)(x) of WIOA; and

(v) Any additional operational planning requirements imposed by the Secretary of Labor or the Secretary of Education under sec. 102(b)(2)(C)(viii) of WIOA.

§ 676.110 What are the program-specific requirements in the Unified State Plan for the adult, dislocated worker, and youth workforce investment activities in Workforce Innovation and Opportunity Act title I?

The program-specific requirements for the adult, dislocated worker, and youth workforce investment activities that must be included in the Unified State Plan are described in sec. 102(b)(2)(D) of WIOA. Additional planning requirements may be required by the Secretary of Labor or the Secretary of Education in accordance with joint planning guidelines issued by the Secretary of Labor and the Secretary of Education.

§ 676.115 What are the program-specific requirements in the Unified State Plan for the Adult Education and Family Literacy Act program in Workforce Innovation and Opportunity Act title II?

The program-specific requirements for the AEFLA program in title II that must be included in the Unified State Plan are described in secs. 102(b)(2)(D)(ii) and 102(b)(2)(C) of WIOA.

(a) With regard to the description required in sec. 102(b)(2)(D)(ii)(I) of WIOA pertaining to content standards, the Unified State Plan must describe how the eligible agency will, by July 1, 2016, align its content standards for adult education with State-

adopted challenging academic content standards under the Elementary and Secondary Education Act of 1965, as amended.

(b) With regard to the description required in sec. 102(b)(2)(C)(iv) of WIOA pertaining to the methods and factors the State will use to distribute funds under the core programs, for title II of WIOA, the Unified State Plan must include -

(1) How the eligible agency will award multi-year grants on a competitive basis to eligible providers in the State; and

(2) How the eligible agency will provide direct and equitable access to funds using the same grant or contract announcement and application procedure.

(c) With regard to the description required under sec. 102(b)(2)(C)(v)(I) of WIOA pertaining to the integration of workforce and education data on core programs, unemployment insurance programs, and education through post-secondary education, for title II of WIOA, the Unified State Plan must include how the State will ensure interoperability of data systems in the reporting on core indicators of performance and performance reports required to be submitted by the State.

<u>§ 676.120 What are the program-specific requirements in the Unified State Plan for Wagner-Peyser Act Employment Service programs in title III of the Workforce Innovation and Opportunity Act</u>?

Wagner-Peyser Act Employment Services programs amended by title III are subject to requirements in sec. 102(b) of WIOA and any additional requirements imposed by the Secretary of Labor under sec. 102(b)(2)(C)(viii) of WIOA, in accordance with joint planning guidelines issued by the Secretary of Labor and the Secretary of Education.

§ 676.125 What are the program-specific requirements in the Unified State Plan for the State Vocational Rehabilitation program in Workforce Innovation and Opportunity Act title IV?

The program specific requirements for the vocational rehabilitation services portion of the Unified or Combined State Plan are set forth in sec. 101(a) of the Rehabilitation Act of 1973, as amended. All submission requirements of the Vocational Rehabilitation Services portion of the Unified or Combined State Plan are in addition to the jointly developed strategic and operational content requirements prescribed by secs. 102(b) and 103 of WIOA.

§ 676.130 What is the submission and approval process of the Unified State Plan?

(a) The Unified State Plan described in § 676.105 must be submitted in accordance with planning guidelines issued jointly by the Secretaries of Labor and Education which explain the submission and approval process in WIOA sec. 102(c).

(b) A State must submit its Unified State Plan to the Secretary of Labor pursuant to a process identified by the Secretary.

(1) The initial Unified State Plan must be submitted no later than 120 days prior to the commencement of the second full program year of WIOA.

(2) The subsequent Unified State Plan must be submitted no later than 120 days prior to the end of the 4-year period described in paragraph (b)(1) of this section.

(3) For purposes of paragraph (b) of this section, “program year” means July 1 through June 30 of any year.

(c) The State must provide an opportunity for public comment on and input into the development of the Unified State Plan prior to its submission.

(1) The opportunity for public comment must include an opportunity for comment by representatives of Local Boards and chief elected officials, businesses, representatives of labor organizations, community-based organizations, adult education providers, institutions of higher education, other stakeholders with an interest in the services provided by the six core programs, and the general public, including individuals with disabilities.

(2) Consistent with the "Sunshine Provision" of WIOA in sec. 101(g), the State Board must make information regarding the Unified State Plan available to the public through electronic means and regularly occurring open meetings in accordance with State law. The Unified State Plan must describe the State's process and timeline for ensuring a meaningful opportunity for public comment.

(d) Upon receipt of the Unified State Plan from the State, the Secretary of Labor will ensure that the entire Unified State Plan is submitted to the Secretary of Education pursuant to a process developed by the Secretaries.

(e) The Unified State Plan is subject to the approval of both the Secretary of Labor and the Secretary of Education.

(f) Before the Secretary of Labor and the Secretary of Education approve the Unified State Plan, the vocational rehabilitation portion of the Unified State Plan described in WIOA sec. 102(b)(2)(D)(iii) must be approved by the Commissioner of the Rehabilitation Services Administration.

(g) The Secretary of Labor and the Secretary of Education will review and approve the Unified State Plan within 90 days of receipt by the appropriate Secretary,

unless the Secretary of Labor or the Secretary of Education determines in writing within that period that:

(1) The plan is inconsistent with a core program's requirements;

(2) The Unified State Plan is inconsistent with any requirement of sec. 102 of WIOA; or

(3) The plan is incomplete or otherwise insufficient to determine whether it is consistent with a core program's requirements or other requirements of WIOA.

(h) If neither the Secretary of Labor nor the Secretary of Education makes the written determination described in paragraph (g) of this section within 90 days of the receipt by the Secretaries, the Unified State Plan will be considered approved.

§ 676.135 What are the requirements for modification of the Unified State Plan?

(a) In addition to the required modification review set forth in paragraph (b) of this section, a Governor may submit a modification of its Unified State Plan at any time during the 4-year period of the plan.

(b) Modifications are required, at a minimum:

(1) At the end of the first 2-year period of any 4-year State Plan, wherein the State Board must review the Unified State Plan, and the Governor must submit modifications to the plan to reflect changes in labor market and economic conditions or other factors affecting the implementation of the Unified State Plan;

(2) When changes in Federal or State law or policy substantially affect the strategies, goals, and priorities upon which the Unified State Plan is based;

(3) When there are changes in the statewide vision, strategies, policies, State adjusted levels of performance, the methodology used to determine local allocation of

funds, reorganizations which change the working relationship with system employees, changes in organizational responsibilities, changes to the membership structure of the State Board or alternative entity, and similar substantial changes to the State's workforce investment system.

(c) Modifications to the Unified State Plan are subject to the same public review and comment requirements in § 676.130(c) that apply to the development of the original Unified State Plan.

(d) Unified State Plan modifications must be approved by the Secretary of Labor and the Secretary of Education, based on the approval standards applicable to the original Unified State Plan under § 676.130. This approval must come after the approval of the Commissioner of the Rehabilitation Services Administration for modification of any portion of the plan described in sec. 102(b)(2)(D)(iii) of WIOA.

§ 676.140 What are the general requirements for submitting a Combined State Plan?

(a) A State may choose to develop and submit a 4-year Combined State Plan in lieu of the Unified State Plan described in § 676.105.

(b) A State that submits a Combined State Plan covering an activity or program described in paragraph (d) of this section that is approved under WIOA sec. 103(c) or determined complete under the law relating to the program will not be required to submit any other plan or application in order to receive Federal funds to carry out the core programs or the program or activities described under paragraph (d) of this section that are covered by the Combined State Plan.

(c) If a State develops a Combined State Plan, it must be submitted in accordance with the process described in § 676.143.

(d) If a State chooses to submit a Combined State Plan, the Plan must include the six core programs and one or more of the optional programs and activities described in sec. 103(a)(2) of WIOA. The optional programs and activities that may be included in the Combined State Plan are:

(1) Career and technical education programs authorized under the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 et seq.);

(2) Temporary Assistance for Needy Families or TANF, authorized under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.);

(3) Employment and training programs authorized under sec. 6(d)(4) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(d)(4));

(4) Work programs authorized under sec. 6(o) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(o));

(5) Trade adjustment assistance activities under chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2271 et seq.);

(6) Services for veterans authorized under chapter 41 of title 38 United States Code;

(7) Programs authorized under State unemployment compensation laws (in accordance with applicable Federal law);

(8) Senior Community Service Employment Programs under title V of the Older Americans Act of 1956 (42 U.S.C. 3056 et seq.);

(9) Employment and training activities carried out by the Department of Housing and Urban Development;

(10) Employment and training activities carried out under the Community Services Block Grant Act (42 U.S.C. 9901 et seq.); and

(11) Reintegration of offenders programs authorized under sec. 212 of the Second Chance Act of 2007 (42 U.S.C. 17532).

(e) A Combined State Plan must contain:

(1) For the core programs, the information required by sec. 102(b) of WIOA and § 676.105, as explained in the joint planning guidance issued by the Secretaries;

(2) For the optional programs, except as described in paragraph (h) of this section, the information required by the law authorizing and governing that program to be submitted to the appropriate Secretary, any other applicable legal requirements, and any common planning requirements described in sec. 102(b) of WIOA, as explained in the joint planning guidance issued by the Secretaries;

(3) A description of joint planning methods across all programs included in the Combined State Plan; and

(4) An assurance that all of the entities responsible for planning or administering the programs described in the Combined State Plan have had a meaningful opportunity to review and comment on all portions of the Plan.

(f) Each optional program included in the Combined State Plan remains subject to the applicable program-specific requirements of the Federal law and regulations, and any other applicable legal or program requirements, governing the implementation and operation of that program.

(g) For purposes of §§ 676.140 through 676.145 the term "appropriate Secretary" means the head of the Federal agency who exercises either plan or application approval

authority for the program or activity under the Federal law authorizing the program or activity or, if there are no planning or application requirements, who exercises administrative authority over the program or activity under that Federal law.

(h) States that include employment and training activities carried out under the Community Services Block Grant (CSBG) Act (42 U.S.C. 9901 et seq.) under a Combined State Plan would submit all other required elements of a complete CSBG State Plan directly to the Federal agency that administers the program, according to the requirements of Federal law and regulations.

§ 676.143 What is the submission and approval process of the Combined State Plan?

(a) For purposes of § 676.140(a), if a State chooses to develop a Combined State Plan it must submit the Combined State Plan in accordance with the requirements described below and the joint planning guidelines, which will further explain the submission and approval procedures for the Combined State Plan, issued by the Secretaries.

(b) The State must submit to the Secretaries of Labor and Education and to the Secretary of the agency with responsibility for approving the program's plan or determining it complete under the law governing the program, as part of its Combined State Plan, any plan, application, form, or any other similar document that is required as a condition for the approval of Federal funding under the applicable program or activity. Such submission must occur in accordance with a process identified by the relevant Secretaries in paragraph (a) of this section.

(c) The Combined State Plan will be approved or disapproved in accordance with the requirements of sec. 103(c) of WIOA.

(1) The portion of the Combined State Plan covering programs administered by the Departments of Labor and Education must be reviewed, and approved or disapproved, by the appropriate Secretary within 90 days beginning on the day the plan is received by the appropriate Secretary from the State, except as provided in paragraph (d) of this section.

(2) If an appropriate Secretary other than the Secretary of Labor or the Secretary of Education has authority to approve or determine complete a portion of the Combined State Plan for a program or activity described in § 676.140(d), that portion of the plan must be reviewed, and approved, disapproved, or have a determination of completeness, by the appropriate Secretary within 120 days beginning on the day the plan is received by the appropriate Secretary from the State except as provided in paragraph (e) of this section.

(d) The review and determination of approval or disapproval, or determination of completeness, of the relevant portion of the Combined State Plan must occur within 90 days for all Department of Labor and Education programs included in the State Plan and within 120 days for the programs administered by other Federal Agencies unless the appropriate Secretary determines in writing within that period that:

(1) The Plan is inconsistent with the requirements of the six core programs or the Federal laws authorizing or applicable to the program or activity involved, including the criteria for approval of a plan or application, or determining the plan's completeness, if any, under such law;

(2) The portion of the Plan describing the six core programs or the program or activity described in paragraph (a) of this section involved does not satisfy the criteria as provided in sec. 102 or 103 of WIOA, as applicable; or

(3) The Plan is incomplete, or otherwise insufficient to determine whether it is consistent with a core program's requirements, other requirements of WIOA, or the Federal laws authorizing, or applicable to, the program or activity described in § 676.140(d), including the criteria for approval of a plan or application, if any, under such law.

(e) If the Secretary of Labor, the Secretary of Education, or the appropriate Secretary does not make the written determination described in paragraph (d) of this section within the relevant period of time after submission of the Plan, that portion of the Combined State Plan over which the Secretary has jurisdiction will be considered approved.

(f) Special rule. In paragraphs (d)(1) and (3) of this section, the term "criteria for approval of a plan or application," with respect to a State or a core program or a program under the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 et seq.), includes a requirement for agreement between the State and the appropriate Secretaries regarding State performance measures or State performance accountability measures, as the case may be, including levels of performance.

§ 676.145 What are the requirements for modifications of the Combined State Plan?

(a) For the core program portions of the Combined State Plan, modifications are required at the end of the first 2-year period of any 4-year Combined State Plan. The State Board must review the Combined State Plan, and the Governor must submit a

modification of the Combined State Plan to reflect changes in labor market and economic conditions or in other factors affecting the implementation of the Combined State Plan.

(b) In addition to the required modification review described in paragraph (a) of this section, a State may submit a modification of its Combined State Plan at any time during the 4-year period of the plan.

(c) For any programs and activities described in § 676.140(d) that are included in a State's Combined State Plan, the State –

(1) May decide if the modification requirements under WIOA sec. 102(c)(3) that apply to the core programs will apply to the optional programs or activities described in § 676.140(d) that are included in the Combined State Plan or may comply with the procedures and requirements applicable to only the particular optional program or activity; and

(2) Must submit, in accordance with the procedure described in § 676.143, any other modification, amendment, or revision required by the Federal law authorizing, or applicable to, the program or activity described in § 676.140(d). If the underlying programmatic requirements change for Federal laws authorizing such programs, a State must either modify its Combined State Plan or submit a separate plan to the appropriate Federal agency in accordance with the new Federal law authorizing the optional program or activity and other legal requirements applicable to such program or activity. A State also may amend its Combined State Plan to add an optional program or activity described in § 676.140(d).

(d) Modifications of the Combined State Plan are subject to the same public review and comment requirements that apply to the development of the original

Combined State Plan as described in § 676.130(c) except that, if the modification, amendment, or revision affects the administration of a particular optional program and has no impact on the Combined State Plan as a whole or the integration and administration of the core and optional programs at the State level, a State may comply instead with the procedures and requirements applicable to the particular optional program.

(e) Modifications for the core program portions of the Combined State Plan must be approved by the Secretary of Labor and the Secretary of Education, based on the approval standards applicable to the original Combined State Plan under § 676.143. This approval must come after the approval of the Commissioner of the Rehabilitation Services Administration for modification of any portion of the Combined State Plan described in sec. 102(b)(2)(D)(iii) of WIOA.

(f) Modifications for the portions of the Combined State Plan for any optional program or activity described in § 676.140(d) must be submitted for approval by only the appropriate Secretary, based on the approval standards applicable to the original Combined State Plan under § 676.143, if the State elects, or in accordance with the procedures and requirements applicable to the particular optional program if the modification, amendment, or revision affects the administration of only that particular optional program and has no impact on the Combined State Plan as a whole or the integration and administration of the core and optional programs at the State level.

2. Add part 677 to read as follows:

PART 677 – PERFORMANCE ACCOUNTABILITY UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

Sec.
677.150 What definitions apply to Workforce Innovation and Opportunity Act performance measurement and reporting requirements?

Subpart A—State Indicators of Performance for Core Programs

Sec.
677.155 What are the primary indicators of performance under the Workforce Innovation and Opportunity Act?
677.160 What information is required for State performance reports?
677.165 May a State require additional indicators of performance?
677.170 How are State adjusted levels of performance for primary indicators established?
677.175 What responsibility do States have to use quarterly wage record information for performance accountability?

Subpart B—Sanctions for State Performance and the Provision of Technical Assistance

Sec.
677.180 What State actions are subject to a financial sanction under Workforce Innovation and Opportunity Act?
677.185 When are sanctions applied for failure to report?
677.190 When are sanctions applied for failure to achieve adjusted levels of performance?
677.195 What should States expect when a sanction is applied to the Governor's Reserve Allotment?
677.200 What other administrative actions will be applied to States' performance requirements?

Subpart C—Local Performance Accountability for Workforce Innovation and Opportunity Act Title I Programs

Sec.
677.205 What performance indicators apply to local areas?
677.210 How are local performance levels established?

Subpart D—Incentives and Sanctions for Local Performance for Workforce Innovation and Opportunity Act Title I Programs

Sec.

677.215 Under what circumstances are local areas eligible for State Incentive Grants?
677.220 Under what circumstances may a corrective action or sanction be applied to local areas for poor performance?
677.225 Under what circumstances may local areas appeal a reorganization plan?

Subpart E—Eligible Training Provider Performance for Workforce Innovation and Opportunity Act Title I Programs

Sec.
677.230 What information is required for the eligible training provider performance reports?

Subpart F—Performance Reporting Administrative Requirements

Sec.
677.235 What are the reporting requirements for individual records for core Workforce Innovation and Opportunity Act title I, III, and IV programs?
677.240 What are the requirements for data validation of State annual performance reports?

Authority: Secs. 503, 116, 189, Pub. L. 113-128, 128 Stat. 1425 (Jul. 22, 2014).

§ 677.150 What definitions apply to Workforce Innovation and Opportunity Act performance measurement and reporting requirements?

(a) Participant. A reportable individual who has received staff-assisted services after satisfying all applicable programmatic requirements for the provision of services, such as eligibility determination.

(1) For the Vocational Rehabilitation (VR) program, a Participant is an individual who has an approved and signed Individualized Plan for Employment (IPE) and has begun to receive services.

(2) The following individuals are not Participants:

(i) Individuals who have not completed at least 12 contact hours in the Adult Education and Family Literacy Act (AEFLA) program;

(ii) Individuals who only use the self-service system; and

(iii) Individuals who only receive information services or activities.

(3) Programs must include participants in their performance calculations.

(b) Reportable individual. An individual who has taken action that demonstrates an intent to use program services and who meets specific reporting criteria of the core program, including:

(1) Individuals who provide identifying information;

(2) Individuals who only use the self-service system; and

(3) Individuals who only receive information on services or activities.

(c) Exit. As defined for the purpose of performance calculations, exit is the point after which an individual who has received services through any program meets the following criteria:

(1) For the adult, dislocated worker, and youth programs under Workforce Innovation and Opportunity Act (WIOA) title I, the AEFLA program under WIOA title II, and the Employment Services authorized by the Wagner-Peyser Act as amended by WIOA title III, exit date is the last date of service:

(i) The exit date cannot be determined until 90 days of no services has elapsed. At that point the exit date is applied retroactively to the last date of service.

(A) Ninety days of no service does not include self-service or information-only activities or follow-up services and

(B) There are no future services planned, excluding follow-up services.

(ii) [Reserved]

(2)(i) For the VR program as amended by WIOA title IV:

(A) The participant's record of service is closed in accordance with 34 CFR 361.56 because the participant has achieved an employment outcome; or

(B) The participant's service record is closed because the individual has not achieved an employment outcome or the individual has been determined ineligible after receiving services in accordance with 34 CFR 361.43.

(ii) Notwithstanding any other provision of this section, a participant will not be considered as meeting the definition of exit from the Vocational Rehabilitation program if the individual's service record is closed because the individual has achieved a supported employment outcome in an integrated setting but not in competitive integrated employment.

Subpart A—State Indicators of Performance for Core Programs

<u>§ 677.155 What are the primary indicators of performance under the Workforce Innovation and Opportunity Act</u>?

(a) All States submitting either a Unified or Combined State Plan under §§ 676.130 and 676.143 of this chapter, must propose expected levels of performance for each of the primary indicators of performance for the adult, dislocated worker, and youth programs under title I of WIOA, the AEFLA program under title II of WIOA, the Wagner-Peyser Act as amended by title III of WIOA, and the VR program as amended by WIOA.

(1) The six primary indicators for performance are:

(i) The percentage of participants, who are in unsubsidized employment during the second quarter after exit from the program;

(ii) The percentage of participants, who are in unsubsidized employment during the fourth quarter after exit from the program;

(iii) Median earnings of participants, who are in unsubsidized employment during the second quarter after exit from the program;

(iv) The percentage of participants who obtained a recognized post-secondary credential or a secondary school diploma, or its recognized equivalent during participation in or within 1 year after exit from the program. A participant who has obtained a secondary school diploma or its recognized equivalent is only included in this measure if the participant is also employed or is enrolled in an education or training program leading to a recognized post-secondary credential within 1 year from program exit;

(v) The percentage of participants who during a program year, are in an education or training program that leads to a recognized post-secondary credential or employment and who are achieving measurable skill gains, defined as documented academic, technical, occupational or other forms of progress, towards such a credential or employment.

(vi) Effectiveness in serving employers, based on indicators developed as required by sec. 116(b)(2)(A)(iv) of WIOA.

(2) [Reserved]

(b) The indicators in paragraphs (a)(1)(i) through (vi) of this section apply to the adult, dislocated worker, AEFLA and VR programs.

(c) The indicators in paragraphs (a)(1)(i) through (iii) and (vi) of this section apply to the Employment Services.

(d) For the youth program under title I of WIOA, the indicators are:

(1) Percentage of participants who are in education or training activities, or in unsubsidized employment, during the second quarter after exit from the program;

(2) Percentage of participants in education or training activities, or in unsubsidized employment, during the fourth quarter after exit from the program;

(3) Median earnings of participants who are in unsubsidized employment during the second quarter after exit from the program;

(4) The percentage of participants who obtained a recognized post-secondary credential or a secondary school diploma, or its recognized equivalent, during participation or up to 1 year after exit. A participant who has obtained a secondary school diploma or its recognized equivalent is only included in this measure if the participant is also employed or is enrolled in an education or training program leading to a recognized post-secondary credential within 1 year from program exit;

(5) The percentage of participants who during a program year, are in an education or training program that leads to a recognized post-secondary credential or employment and who are achieving measurable skill gains, defined as documented academic, technical, occupational or other forms of progress towards such a credential or employment;

(6) Effectiveness in serving employers, based on indicators developed as required by sec. 116(b)(2)(iv) of WIOA.

§ 677.160 What information is required for State performance reports?

(a) Section 116(d)(2) of WIOA requires States to submit a State performance report. The State performance report must be submitted annually using a template the

Departments will disseminate and must provide, at a minimum, information on the actual performance levels achieved consistent with § 677.175 with respect to:

(1) The total number of participants served, and the total number of participants who exited each of the core programs identified in sec. 116(b)(3)(A)(ii) of WIOA, including disaggregated counts of those who participated in and exited a core program, by:

(i) Individuals with barriers to employment as defined in WIOA sec. 3(24); and

(ii) Co-enrollment in any of the programs in WIOA sec 116(b)(3)(A)(ii).

(2) Information on the performance levels achieved for the primary indicators for all of the core programs identified in § 677.155 including disaggregated levels for:

(i) Individuals with barriers to employment as defined in WIOA sec. 3(24);

(ii) Age;

(iii) Sex; and

(iv) Race and ethnicity.

(3) The total number of participants and exiters who received career and training services for the most recent program year and the three preceding program years, as applicable to the program;

(4) Information on the performance levels achieved for the primary indicators consistent with § 677.155 for career and training services for the most recent program year and the 3 preceding program years, as applicable to the program;

(5) The percentage of participants in a program who obtained unsubsidized employment related to the training received (often referred to as training-related employment) through WIOA title I-B programs;

(6) The amount of funds spent on each type of career and training service for the most recent program year and the 3 preceding program years, as applicable to the program;

(7) The average cost per participant for those participants who received career and training services, respectively, during the most recent program year and the 3 preceding program years for, as applicable to the program;

(8) The percentage of a State's annual allotment under WIOA sec. 132(b) that the State spent on administrative costs; and

(9) Information that facilitates comparisons of programs with programs in other States.

(10) For WIOA title I programs, a State performance narrative, which, for States in which a local area is implementing a pay-for-performance contracting strategy, at a minimum provides:

(i) A description of pay-for-performance contract strategies being used for programs;

(ii) The performance of service providers entering into contracts for such strategies, measured against the levels of performance specified in the contracts for such strategies; and

(iii) An evaluation of the design of the programs and performance strategies and, when available, the satisfaction of employers and participants who received services under such strategies.

(b) The disaggregation of data for the State performance report must be done in compliance with WIOA sec. 116(d)(6)(C).

(c) The State performance reports must include a mechanism of electronic access to the State's local area and ETP performance reports.

(d) States must comply with these requirements from sec. 116 of WIOA as explained in joint guidance issued by the Departments of Education and Labor, which may include information on reportable individuals as determined by the Secretaries.

§ 677.165 May a State require additional indicators of performance?

States may identify additional indicators of performance for the six core programs. These indicators must be included in the Unified or Combined State Plan.

§ 677.170 How are State adjusted levels of performance for primary indicators established?

(a) A State must submit in the State Plan expected levels of performance on the primary indicators for each core program as required by sec. 116(b)(iv) of WIOA as explained in joint guidance issued by the Secretaries of Education and Labor.

(1) The initial State Plan submitted under WIOA must contain expected levels of performance for the first 2 years of the State Plan period.

(2) States must submit expected levels of performance for the third and fourth year of the State Plan before the third program year consistent with §§ 676.135 and 676.145 of this chapter.

(b) The State must reach agreement on levels of performance with the Secretaries of Education and Labor for each of the core programs based on the following factors:

(1) How the levels of performance compare with State adjusted levels of performance established for other States;

(2) The application of an objective statistical model established by the Secretaries of Education and Labor, subject to paragraph (d) of this section;

(3) How the levels promote continuous improvement in performance based on the primary indicators and ensure optimal return on investment of Federal funds; and

(4) The extent to which the levels assist the State in meeting the performance goals established by the Secretaries of Education and Labor for the core programs in accordance with the Government Performance and Results Act of 1993, and its amendments.

(c) An objective statistical adjustment model will be developed and disseminated by the Secretaries. The model will be based on:

(1) Differences among States in actual economic conditions, including unemployment rates and job losses or gains in particular industries; and

(2) The characteristics of participants, including:

(i) Indicators of poor work history;

(ii) Lack of work experience;

(iii) Lack of educational or occupational skills attainment;

(iv) Dislocation from high-wage and high-benefit employment;

(v) Low levels of literacy;

(vi) Low levels of English proficiency;

(vii) Disability status;

(viii) Homelessness;

(ix) Ex-offender status; and

(x) Welfare dependency.

(d) The objective statistical adjustment model developed under paragraph (c) of this section will be:

(1) Applied to the core programs' primary indicators upon availability of data which is necessary to populate the model and apply it to the programs;

(2) Subject to paragraph (d)(1) of this section, used before the beginning of a program year in order to establish State performance targets for the upcoming program year; and

(3) subject to paragraph (d)(1) of this section, used to revise performance levels at the end of a program year based on actual circumstances, consistent with sec. 116(b)(3)(vii) of WIOA.

(e) States must comply with these requirements from sec. 116 of WIOA as explained in joint guidance issued by the Departments of Education and Labor.

<u>§ 677.175 What responsibility do States have to use quarterly wage record information for performance accountability</u>?

(a) States must, consistent with State laws, use quarterly wage record information in measuring the progress on State adjusted levels of performance for the primary indicators outlined in § 677.155 and local performance indicators identified in § 677.205. The use of social security numbers from participants and such other information as is necessary to measure the progress of those participants through quarterly wage record information is authorized.

(b) "Quarterly wage record information" means intrastate and interstate wages paid to an individual, the social security number (or numbers, if more than one) of the

individual and the name, address, State, and the Federal employer identification number of the employer paying the wages to the individual.

(c) The Governor may designate a State agency [or appropriate State entity] to assist in carrying out the performance reporting requirements for WIOA core programs and eligible training providers. The Governor or such agency [or appropriate State entity] is responsible for:

(1) Facilitating data matches; and

(2) Data quality reliability, protection against disaggregation that would violate privacy.

Subpart B—Sanctions for State Performance and the Provision of Technical Assistance

§ 677.180 What State actions are subject to a financial sanction under Workforce Innovation and Opportunity Act?

The following failures by a State are subject to financial sanction under WIOA sec. 116(d):

(a) The failure by a State to submit the State annual performance report required under WIOA sec. 116(d)(2); or

(b) The failure by a State to meet adjusted levels of performance for the primary indicators of performance in accordance with sec. 116(f) of WIOA.

§ 677.185 When are sanctions applied for failure to report?

(a) Sanctions will be applied when a State fails to submit the State annual performance reports required under sec. 116(d)(2) of WIOA. It is a failure to report if the State either:

(1) Does not submit a State annual performance report by the date for timely submission set in performance reporting guidance; or

(2) Submits a State annual performance report by the date for timely submission, but the report is incomplete.

(b) Sanctions will not be assessed if the reporting failure is due to exceptional circumstances outside of the State's control. Exceptional circumstances may include, but are not limited to:

(1) Natural disasters;

(2) Unexpected personnel transitions; and

(3) Unexpected technology related impacts.

(c) In the event that a State may not be able to submit a complete and accurate performance report by the deadline for timely reporting:

(1) The State must notify the Secretary of Labor or Secretary of Education as soon as possible of a potential impact on the ability to submit their State annual performance reports by no later than 30 days prior to the established deadline in order to not be considered failing to report.

(2) In circumstances where unexpected events occur within the 30-day period before the deadline for submission of the State annual performance reports, the Secretary of Labor and Secretary of Education will review requests for extending the reporting

deadline in accordance with the Departments' procedures explained in guidance on reporting timelines.

§ 677.190 When are sanctions applied for failure to achieve adjusted levels of performance?

(a) States' negotiated levels of performance will be adjusted through the application of the statistical adjustment model established under § 677.170 to account for actual conditions experienced during a program year and characteristics of participants, annually at the close of each program year.

(b) States that fail to meet adjusted levels of performance for the primary indicators of performance outlined in § 677.155 for any year will receive technical assistance, including assistance in the development of a performance improvement plan provided by the Secretary of Labor or Secretary of Education.

(c) State failure to meet adjusted levels of performance will be determined through three criteria:

(1) Overall State program scores, based on the percent achieved by a program on each of the six primary indicators compared to the adjusted goal for each primary indicator. The average of the percentage of the adjusted goal achieved for each primary indicator will constitute the overall program score for the State;

(2) Overall State indicator scores, based on the percent achieved by each program on each of the individual primary indicators compared to the adjusted goal. The average of the percentage of the adjusted goal achieved for each of the six core programs' will constitute an overall indicator score for the State; and

(3) Individual indicator scores, based on the percent achieved by each program on each of the individual primary indicators compared to the adjusted goals.

(d) A performance failure occurs when:

(1) Any overall State program score or overall State indicator score falls below 90 percent for the program year; or

(2) Any of the States' individual indicator scores fall below 50 percent for the program year.

(e) Sanctions based on performance failure will be applied to States if, for 2 consecutive years, the State fails to meet 90 percent of the overall State program score, 90 percent of the overall State indicator score, or 50 percent on any individual indicator score for the same program or indicator.

<u>§ 677.195 What should States expect when a sanction is applied to the Governor's Reserve Allotment</u>?

(a) The Secretary of Labor and the Secretary of Education will reduce the Governor's Reserve Allotment by 5 percent of the maximum available amount for the immediately succeeding program year if:

(1) The State fails to submit the State annual performance reports as required under WIOA sec. 116(d)(2), as defined in § 677.185; or

(2) The State fails to meet State adjusted levels of performance for the same primary performance indicator(s) under either § 677.190(d)(1) or § 677.190(d)(2) for the second consecutive year as defined in § 677.190.

(b) If the State fails under paragraphs (a)(1) and (2) of this section in the same program year, the Secretary of Labor and the Secretary of Education will reduce the

Governor's Reserve Allotment by 10 percent of the maximum available amount for the immediately succeeding program year.

(c) If a State's Governor's Reserve Allotment is reduced:

(1) The reduced amount will not be returned to the State in the event that the State later improves performance or submits its annual performance report; and

(2) The Governor's reserve will continue to be set at the reduced level in each subsequent year until the Secretary of Labor or the Secretary of Education, dependent upon the impacted program, determines that the State met the State adjusted levels of performance for the applicable primary performance indicators and has submitted all of the required performance reports.

(d) A State may request review of a sanction the U.S. Department of Labor imposes in accordance with the provisions of § 683.800 of this chapter.

<u>§ 677.200 What other administrative actions will be applied to States' performance requirements</u>?

(a) In addition to sanctions for failure to report or failure to meet adjusted levels of performance, States will be subject to administrative actions in the case of poor performance.

(b) States' performance achievement on the individual primary indicators will be assessed in addition to the overall program score and overall indicator score. Based on this assessment, as clarified and explained in guidance, for performance on any individual primary indicator, the Secretary of Labor or the Secretary of Education will require the State to establish a performance risk plan to address continuous improvement on the individual primary indicator.

Subpart C—Local Performance Accountability for Workforce Innovation and Opportunity Act Title I Programs

§ 677.205 What performance indicators apply to local areas?

(a) Each local workforce investment area in a State under title I of WIOA is subject to the same primary indicators of performance for the core programs for WIOA title I under § 677.155(a)(1) and (d) that apply to the State.

(b) In addition to the indicators described in paragraph (a) of this section, under § 677.165, the Governor may apply additional indicators of performance to local areas in the State.

(c) States must annually make local area performance reports available to the public using a template that the Departments will disseminate in guidance, including by electronic means. The State must provide electronic access to the public local area performance report in its annual State performance report.

(d) The local area performance report must provide information on the actual performance levels for the local area based on quarterly wage records consistent with the requirements for States under § 677.175.

(e) The local area performance report must include:

(1) Performance levels achieved by the local area for the indicators for the adult, dislocated worker, and youth programs under title I of WIOA in § 677.155(a)(1) and (3);

(2) Performance levels achieved by the local area for the adult, dislocated worker, and youth programs under title I of WIOA in § 677.160(a);

(3) The percentage of a local area's allotment under WIOA sec. 128(b) and sec. 133(b) that the local area spent on administrative costs; and

(4) Other information that facilitates comparisons of programs with programs in other local areas (or planning regions if the local area is part of a planning region).

(f) States must comply with any requirements from sec. 116(d)(3) of WIOA as explained in guidance, including the use of the performance reporting template, issued by the Department of Labor.

§ 677.210 How are local performance levels established?

(a) The objective statistical adjustment model required under sec. 116(b)(3)(A)(viii) of WIOA and described in the § 677.170 must be:

(1) Used to establish local performance targets for the upcoming program year; and

(2) Used to revise performance levels at the end of a program year based on actual circumstances, consistent with WIOA sec. 116(c)(3).

(b) The Governor, Local Board, and chief elected official must reach agreement on local targets and levels based on a negotiations process before the start of a program year with the use of the objective statistical model described in paragraph (a) of this section. The negotiations will include a discussion of circumstances not accounted for in the model and will take into account the extent to which the levels promote continuous improvement. The objective statistical model will be applied at the end of the program year based on actual conditions experienced.

(c) The negotiations process described in paragraph (b) of this section must be developed by the Governor and disseminated to all Local Boards and chief elected officials.

(d) The Local Boards may apply performance measures to service providers that differ from the performance measures that apply to the local area. These performance measures should be established after considering:

(1) The established local performance levels;

(2) The services provided by each provider; and

(3) The populations the service providers are intended to serve.

Subpart D—Incentives and Sanctions for Local Performance for Workforce Innovation and Opportunity Act Title I Programs

§ 677.215 Under what circumstances are local areas eligible for State Incentive Grants?

(a) The Governor is not required to award local incentive funds. The Governor may use non-Federal funds to create incentives for Local Boards to implement pay-for-performance contract strategies for the delivery of training services described in WIOA sec. 134(c)(3) or activities described in WIOA sec. 129(c)(2) in the local areas served by the Local Boards.

(b) Pay-for-performance contract strategies must be implemented in accordance with §§ 683.500 through 683.530 of this chapter and § 677.160.

§ 677.220 Under what circumstances may a corrective action or sanction be applied to local areas for poor performance?

(a) If a local area fails to meet the levels of performance agreed to under § 677.210 for the primary indicators of performance in the adult, dislocated worker, and youth programs authorized under WIOA title I in any program year, technical assistance must be provided by the Governor or, upon the Governor's request, by the Secretary of Labor.

(1) A State must establish the threshold for failure in meeting levels of performance for a local area before negotiating the adjusted levels of performance for the local area.

(2) The technical assistance may include:

(i) Assistance in the development of a performance improvement plan;

(ii) The development of a modified local or regional plan; or

(iii) Other actions designed to assist the local area in improving performance.

(b) If a local area fails to meet the levels of performance agreed to under § 677.210 for the primary indicators of performance for the adult, dislocated worker, and youth programs authorized under WIOA title I for a third consecutive program year, the Governor must take corrective actions. The corrective actions must include the development of a reorganization plan under which the Governor:

(1) Requires the appointment and certification of a new Local Board, consistent with the criteria established under § 679.350 of this chapter;

(2) Prohibits the use of eligible providers and one-stop partners that have been identified as achieving poor levels of performance; or

(3) Takes such other significant actions as the Governor determines are appropriate.

§ 677.225 Under what circumstances may local areas appeal a reorganization plan?

(a) The Local Board and chief elected official for a local area that is subject to a reorganization plan under WIOA sec. 116(g)(2)(A) may appeal to the Governor to rescind or revise the reorganization plan not later than 30 days after receiving notice of the reorganization plan. The Governor must make a final decision within 30 days after receipt of the appeal.

(b) The Local Board and chief elected official may appeal the final decision of the Governor to the Secretary of Labor not later than 30 days after receiving the decision from the Governor. Any appeal of the Governor's final decision must be:

(1) Appealed jointly by the Local Board and chief elected official to the Secretary under § 683.650 of this chapter; and

(2) Must be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, 200 Constitution Ave. N.W., Washington DC 20210, Attention: ASET. A copy of the appeal must be simultaneously provided to the Governor.

(c) Upon receipt of the joint appeal from the Local Board and chief elected official, the Secretary must make a final decision within 30 days. In making this determination the Secretary may consider any comments submitted by the Governor in response to the appeals.

(d) The decision by the Governor to impose a reorganization plan becomes effective at the time it is issued and remains effective unless the Secretary of Labor rescinds or revises the reorganization plan under WIOA sec. 116(g)(2)(B)(ii).

Subpart E—Eligible Training Provider Performance for Workforce Innovation and Opportunity Act Title I Programs

§ 677.230 What information is required for the eligible training provider performance reports?

(a) States are required to make available, and publish, annually using a template the Departments will disseminate including through electronic means, the eligible training provider performance reports for eligible training providers who provide services under sec. 122 of WIOA that are described in §§ 680.400 through 680.530 of this chapter. These reports at a minimum must include, consistent with § 677.175 and with respect to each program of study that is eligible to receive funds under WIOA:

(1) The total number of participants who received training services under the adult and dislocated worker programs authorized under WIOA title I for the most recent year and the 3 preceding program years, including:

(i) The number of participants under the adult and dislocated worker programs disaggregated by barriers to employment;

(ii) The number of participants under the adult and dislocated worker programs disaggregated by race, ethnicity, sex, and age;

(iii) The number of participants under the adult and dislocated worker programs disaggregated by the type of training entity for the most recent program year and the 3 preceding program years;

(2) The total number of participants who exit a program of study or its equivalent, including disaggregate counts by the type of training entity during the most recent program year and the 3 preceding program years;

(3) The average cost-per-participant for participants who received training services for the most recent program year and the 3 preceding program years disaggregated by type of training entity;

(4) The total number of individuals exiting from the program of study (or the equivalent); and

(5) The levels of performance achieved for the primary indicators of performance identified in §§ 677.155(a)(1)(i) through (iv) with respect to all individuals in a program of study (or the equivalent).

(b) Registered apprenticeship programs are not required to submit performance information. See § 680.470 of this chapter. If a registered apprenticeship program voluntarily submits performance information to a State, the State must include this information in the report.

(c) The State must provide electronic access to the public eligible training provider performance report in its annual State performance report.

(d) States must comply with any requirements from sec. 116(d)(4) of WIOA as explained in guidance issued by the Department of Labor.

(e) The Governor may designate one or more State agencies such as a State education agency or State educational authority to assist in overseeing eligible training provider performance and facilitating the production and dissemination of eligible training provider performance reports. These agencies may be the same agencies that are designated as responsible for administering the eligible training providers list as provided under § 680.500 of this chapter. The Governor or such agencies, or authorities, is responsible for:

(1) Facilitating data matches between ETP records and UI wage data in order to produce the report;

(2) The creation and dissemination of the reports as described in paragraphs (a) through (d) of this section;

(3) Coordinating the dissemination of the performance reports with the eligible training provider list and the information required to accompany the list, as provided in § 680.500 of this chapter.

Subpart F—Performance Reporting Administrative Requirements

§ 677.235 What are the reporting requirements for individual records for core Workforce Innovation and Opportunity Act title I, III, and IV programs?

(a) On a quarterly basis, each State must submit to the Secretary of Labor or Secretary of Education, as appropriate, individual records that include demographic information, information on services received, and information on resulting outcomes, as appropriate, for each reportable individual in a core program administered by the Secretary of Labor or Education. Such records submitted to the Department of Labor must be submitted in one record that is integrated across all core Department of Labor programs.

(b) For individual records submitted to the Secretary of Labor, records must be integrated across all core programs administered by the Secretary of Labor in one single file.

(c) States must comply with any other requirements from sec. 116(d)(2) of WIOA as explained in guidance issued by the Department of Labor.

§ 677.240 What are the requirements for data validation of State annual performance reports?

(a) States must establish procedures, consistent with guidelines issued by the Secretary of Education or Secretary of Labor, to submit complete annual performance reports that contain information that is valid and reliable.

(b) If a State fails to meet standards in paragraph (a) of this section as determined by the Secretary of Labor or Secretary of Education, the appropriate Secretary will provide technical assistance and may require the State to develop and implement corrective actions, which may require the State to provide training for its subrecipients.

(c) The Secretary of Labor and the Secretary of Education will provide training and technical assistance to States in order to implement this section.

3. Add part 678 to read as follows:

PART 678 – DESCRIPTION OF THE ONE-STOP SYSTEM UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

Subpart A—General Description of the One-Stop Delivery System

Sec.
678.300 What is the one-stop delivery system?
678.305 What is a comprehensive one-stop center and what must be provided there?
678.310 What is an affiliated site and what must be provided there?
678.315 Can a stand-alone Wagner-Peyser employment service office be designated as an affiliated one-stop site?
678.320 Are there any requirements for networks of eligible one-stop partners or specialized centers?

Subpart B—One-Stop Partners and the Responsibilities of Partners

Sec.
678.400 Who are the required one-stop partners?
678.405 Is Temporary Assistance for Needy Families a required one-stop partner?

678.410 What other entities may serve as one-stop partners?
678.415 What entity serves as the one-stop partner for a particular program in the local area?
678.420 What are the roles and responsibilities of the required one-stop partners?
678.425 What are the applicable career services that must be provided through the one-stop delivery system by required one-stop partners?
678.430 What are career services?
678.435 What are the business services provided through the one-stop delivery system, and how are they provided?
678.440 When may a fee be charged for the business services in this subpart?

Subpart C—Memorandum of Understanding for the One-Stop Delivery System

Sec.
678.500 What is the Memorandum of Understanding for the one-stop delivery system and what must be included in the Memorandum of Understanding?
678.505 Is there a single Memorandum of Understanding for the local area, or must there be separate Memoranda of Understanding between the Local Board and each partner?
678.510 How should the Memorandum of Understanding be negotiated?

Subpart D—One-Stop Operators

Sec.
678.600 Who may operate one-stop centers?
678.605 How is the one-stop operator selected?
678.610 How is sole source selection of one-stop operators accomplished?
678.615 Can an entity serving as one-stop operator compete to be a one-stop operator under the procurement requirements of this subpart?
678.620 What is the one-stop operator's role?
678.625 Can a one-stop operator also be a service provider?
678.630 Can State merit staff still work in a one-stop where the operator is not a governmental entity?
678.635 What is the effective date of the provisions of this subpart?

Subpart E—One-Stop Operating Costs

Sec.
678.700 What are one-stop infrastructure costs?
678.705 What guidance must the Governor issue regarding one-stop infrastructure funding?
678.710 How are infrastructure costs funded?
678.715 How are one-stop infrastructure costs funded in the local funding mechanism?
678.720 What funds are used to pay for infrastructure costs in the local one-stop infrastructure funding mechanism?

678.725 What happens if consensus on infrastructure funding is not reached at the local level between the Local Board, chief elected officials, and one-stop partners?
678.730 What is the State one-stop infrastructure funding mechanism?
678.735 How are partner contributions determined in the State one-stop funding mechanism?
678.740 What funds are used to pay for infrastructure costs in the State one-stop infrastructure funding mechanism?
678.745 How is the allocation formula used by the Governor determined in the State one-stop funding mechanism?
678.750 When and how can a one-stop partner appeal a one-stop infrastructure amount designated by the State under the State infrastructure funding mechanism?
678.755 What are the required elements regarding infrastructure funding that must be included in the one-stop Memorandum of Understanding?
678.760 How do one-stop partners jointly fund other shared costs under the Memorandum of Understanding?

Subpart F—One-Stop Certification

Sec.
678.800 How are one-stop centers and one-stop delivery systems certified for effectiveness, physical and programmatic accessibility, and continuous improvement?

Subpart G—Common Identifier

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

Authority: Secs. 503, 107, 121, 134, 189, Pub. L. 113-128, 128 Stat. 1425 (Jul. 22, 2014).

Subpart A—General Description of the One-Stop Delivery System

§ 678.300 What is the one-stop delivery system?

(a) The one-stop delivery system brings together workforce development, educational, and other human resource services in a seamless customer-focused service delivery network that enhances access to the programs' services and improves long-term

employment outcomes for individuals receiving assistance. One-stop partners administer separately funded programs as a set of integrated streamlined services to customers.

(b) Title I of the Workforce Innovation and Opportunity Act (WIOA) assigns responsibilities at the local, State, and Federal level to ensure the creation and maintenance of a one-stop delivery system that enhances the range and quality of education and workforce development services that business and individual customers can access.

(c) The system must include at least one comprehensive physical center in each local area as described in § 678.305.

(d) The system may also have additional arrangements to supplement the comprehensive center. These arrangements include:

(1) An affiliated site or a network of affiliated sites, where one or more partners make programs, services, and activities available, as described in § 678.310;

(2) A network of eligible one-stop partners, as described in §§ 678.400 through 678.410, through which each partner provides one or more of the programs, services, and activities that are linked, physically or technologically, to an affiliated site or access point that assures customers are provided information on the availability of career services, as well as other program services and activities, regardless of where they initially enter the workforce system in the local area; and

(3) Specialized centers that address specific needs, including those of dislocated workers, youth, or key industry sectors, or clusters.

(e) Required one-stop partner programs must provide access to programs, services, and activities through electronic means if applicable and practicable. This is in

addition to providing access to services through the mandatory comprehensive physical one-stop center and any affiliated sites or specialized centers. The provision of programs and services by electronic methods such as Web sites, telephones, or other means must improve the efficiency, coordination, and quality of one-stop partner services. Electronic delivery must not replace access to such services at a comprehensive one-stop center or be a substitute to making services available at an affiliated site if the partner is participating in an affiliated site. Electronic delivery systems must be in compliance with the nondiscrimination and equal opportunity provisions of WIOA in sec. 188 and its implementing regulations at 29 CFR part 37.

(f) The design of the local area's one-stop delivery system must be described in the Memorandum of Understanding (MOU) executed with the one-stop partners, described in § 678.500.

§ 678.305 What is a comprehensive one-stop center and what must be provided there?

(a) A comprehensive one-stop center is a physical location where jobseeker and employer customers can access the programs, services, and activities of all required one-stop partners. A comprehensive one-stop center must have at least one title I staff person physically present.

(b) The comprehensive one-stop center must provide:

(1) Career services, described in § 678.430;

(2) Access to training services described in § 680.200 of this chapter;

(3) Access to any employment and training activities carried out under sec. 134(d) of WIOA;

(4) Access to programs and activities carried out by one-stop partners listed in §§ 678.400 through 678.410, including Wagner-Peyser employment services; and

(5) Workforce and labor market information.

(c) Customers must have access to these programs, services, and activities during regular business days at a comprehensive one-stop center. The Local Board may establish other service hours at other times to accommodate the schedules of individuals who work on regular business days. The State Board will evaluate the hours of access to service as part of the evaluation of effectiveness in the one-stop certification process described in § 678.800(b).

(d) "Access" to programs and services means having either: program staff physically present at the location; having partner program staff physically present at the one-stop appropriately trained to provide information to customers about the programs, services, and activities available through partner programs; or providing direct linkage through technology to program staff who can provide meaningful information or services.

(1) A "direct linkage" means providing direct connection at the one-stop, within a reasonable time, by phone or through a real-time Web-based communication to a program staff member who can provide program information or services to the customer.

(2) A "direct linkage" does not include providing a phone number or computer Web site that can be used at an individual's home; providing information, pamphlets, or materials; or making arrangements for the customer to receive services at a later time or on a different day.

(e) All comprehensive one-stop centers must be physically and programmatically accessible to individuals with disabilities, as described in § 678.800.

§ 678.310 What is an affiliated site and what must be provided there?

(a) An affiliated site, or affiliate one-stop center, is a site that makes available to jobseeker and employer customers one or more of the one-stop partners' programs, services, and activities. An affiliated site does not need to provide access to every required one-stop partner program. The frequency of program staff's physical presence in the affiliated site will be determined at the local level. Affiliated sites are access points in addition to the Comprehensive one-stop center(s) in each local area. If used by local areas as a part of the service delivery strategy, affiliate sites should be implemented in a manner that supplements and enhances customer access to services.

(b) As described in § 678.315, Wagner-Peyser employment services cannot be a stand-alone affiliated site.

(c) States, in conjunction with the Local Workforce Development Boards, must examine lease agreements and property holdings throughout the one-stop delivery system in order to use property in an efficient and effective way. Where necessary and appropriate, States and Local Boards must take expeditious steps to align lease expiration dates with efforts to consolidate one-stop operations into service points where Wagner-Peyser employment services are collocated as soon as reasonably possible. These steps must be included in the State Plan.

(d) All affiliated sites must be physically and programmatically accessible to individuals with disabilities, as described in § 678.800.

§ 678.315 Can a stand-alone Wagner-Peyser employment service office be designated as an affiliated one-stop site?

(a) Separate stand-alone Wagner-Peyser employment services offices are not permitted under WIOA, as also described in § 652.202 of this chapter.

(b) If Wagner-Peyser employment services are provided at an affiliated site, there must be at least one other partner in the affiliated site with staff physically present more than 50 percent of the time the center is open. Additionally, the other partner must not be the partner administering local veterans' employment representatives, disabled veterans' outreach program specialists, or unemployment compensation programs. If Wagner-Peyser employment services and any of these three programs are provided at an affiliated site, an additional partner must have staff present in the center more than 50 percent of the time the center is open.

<u>§ 678.320 Are there any requirements for networks of eligible one-stop partners or specialized centers</u>?

Any network of one-stop partners or specialized centers must be connected to, such as having processes in place to make referrals to, the comprehensive and any appropriate affiliate one-stop centers. Wagner-Peyser employment services cannot stand alone in a specialized center. Just as described in § 678.315 for an affiliated site, a specialized center must include other programs besides Wagner-Peyser employment services, local veterans' employment representatives, disabled veterans' outreach program specialists, and unemployment compensation.

Subpart B—One-Stop Partners and the Responsibilities of Partners

§ 678.400 Who are the required one-stop partners?

(a) Section 121(b)(1)(B) of WIOA identifies the entities that are required partners in the local one-stop systems.

(b) The required partners are the entities responsible for administering the following programs and activities in the local area:

(1) Programs authorized under title I of WIOA, including:

(i) Adults;

(ii) Dislocated workers;

(iii) Youth;

(iv) Job Corps;

(v) YouthBuild;

(vi) Native American programs; and

(vii) Migrant and seasonal farmworker programs;

(2) Employment services authorized under the Wagner-Peyser Act (29 U.S.C. 49 et seq.);

(3) Adult education and literacy activities authorized under title II of WIOA;

(4) The Vocational Rehabilitation program authorized under title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 et seq.);

(5) The Senior Community Service Employment Program authorized under title V of the Older Americans Act of 1965 (42 U.S.C. 3056 et seq.);

(6) Career and technical education programs at the post-secondary level authorized under the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 et seq.);

(7) Trade Adjustment Assistance activities authorized under chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2271 et seq.);

(8) Jobs for Veterans State Grants programs authorized under chapter 41 of title 38, U.S.C.;

(9) Employment and training activities carried out under the Community Services Block Grant (42 U.S.C. 9901 et seq.);

(10) Employment and training activities carried out by the Department of Housing and Urban Development;

(11) Programs authorized under State unemployment compensation laws (in accordance with applicable Federal law);

(12) Programs authorized under sec. 212 of the Second Chance Act of 2007 (42 U.S.C. 17532); and

(13) Temporary Assistance for Needy Families (TANF) authorized under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), unless exempted by the Governor under § 678.405(b).

§ 678.405 Is Temporary Assistance for Needy Families a required one-stop partner?

(a) Yes, TANF, authorized under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), is a required partner. (WIOA sec. 121(b)(1)(B)(xiii)).

(b) The Governor may determine that TANF will not be a required partner in the State, or within some specific local areas in the State. In this instance, the Governor must

notify the Secretaries of the U.S. Departments of Labor and Health and Human Services in writing of this determination.

(c) In States, or local areas within a State, where the Governor has determined that TANF is not required to be a partner, local TANF programs may still opt to be a one-stop partner, or to work in collaboration with the one-stop center.

§ 678.410 What other entities may serve as one-stop partners?

(a) 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 Board and chief elected official(s) approve the entity's participation.

(b) Additional partners may include:

(1) Employment and training programs administered by the Social Security Administration, including the Ticket to Work and Self-Sufficiency Program established under sec. 1148 of the Social Security Act (42 U.S.C. 1320b-19);

(2) Employment and training programs carried out by the Small Business Administration;

(3) Supplemental Nutrition Assistance Program (SNAP) employment and training programs, authorized under secs. 6(d)(4) and 6(o) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(d)(4));

(4) Client Assistance Program authorized under sec. 112 of the Rehabilitation Act of 1973 (29 U.S.C. 732);

(5) Programs authorized under the National and Community Service Act of 1990 (42 U.S.C. 12501 et seq.); and

(6) Other appropriate Federal, State or local programs, including employment, education, and training programs provided by public libraries or in the private sector.

§ 678.415 What entity serves as the one-stop partner for a particular program in the local area?

(a) The entity that carries out the program and activities listed in § 678.400 or § 678.405, and therefore serves as the one-stop partner, is the grant recipient, administrative entity, or organization responsible for administering the funds of the specified program in the local area. The term "entity" does not include the service providers that contract with, or are subrecipients of, the local administrative entity. For programs that do not include local administrative entities, the responsible State agency should be the partner. Specific entities for particular programs are identified in paragraph (b) of this section. If a program or activity listed in § 678.400 is not carried out in a local area, the requirements relating to a required one-stop partner are not applicable to such program or activity in that local one-stop system.

(b) For title II of WIOA, the entity that carries out the program for the purposes of paragraph (a) of this section is the sole entity or agency in the State or outlying area responsible for administering or supervising policy for adult education and literacy activities in the State or outlying area. The State eligible entity may delegate its responsibilities under paragraph (a) of this section to one or more eligible providers or consortium of eligible providers.

(c) For the Vocational Rehabilitation program, authorized under title I of the Rehabilitation Act, the entity that carries out the program for the purposes of paragraph (a) of this section is the designated State agencies or designated State units specified

under sec. 101(a)(2) of the Rehabilitation Act that is primarily concerned with vocational rehabilitation, or vocational and other rehabilitation, of individuals with disabilities.

(d) Under WIOA, the national programs, including Job Corps, the Native American program, YouthBuild, and Migrant and Seasonal Farmworker programs are required one-stop partners. The entity for the Native American program and Migrant and Seasonal Farmworker programs is the grantee of those respective programs. The entity for Job Corps is the Job Corps center.

(e) For the Carl D. Perkins Career and Technical Education Act of 2006, the entity that carries out the program for the purposes of paragraph (a) of this section is the State eligible agency. The State eligible agency may delegate its responsibilities under paragraph (a) of this section to one or more State agencies, eligible recipients at the post-secondary level, or consortia of eligible recipients at the post-secondary level.

§ 678.420 What are the roles and responsibilities of the required one-stop partners?

Each required partner must:

(a) Provide access to its programs or activities through the one-stop delivery system, in addition to any other appropriate locations; (WIOA sec. 121(b)(1)(A)(i).)

(b) Use a portion of funds made available to the partner's program, to the extent consistent with the Federal law authorizing the partner's program and with Federal cost principles in 2 CFR parts 200 and 2900 (requiring, among other things, that costs are allowable, reasonable, necessary, and allocable), to:

(1) Provide applicable career services; and

(2) Work collaboratively with the State and Local Boards to establish and maintain the one-stop delivery system. This includes jointly funding the one-stop infrastructure through partner contributions that are based upon:

(i) A reasonable cost allocation methodology by which infrastructure costs are charged to each partner in proportion to the relative benefits;

(ii) Federal cost principles; and

(iii) Any local administrative cost requirements in the Federal law authorizing the partner's program. (This is further described in § 678.700). (WIOA sec. 121(b)(1)(A)(ii).)

(c) Enter into an MOU with the Local Board relating to the operation of the one-stop system that meets the requirements of § 678.500(d);

(d) Participate in the operation of the one-stop system consistent with the terms of the MOU, requirements of authorizing laws, the Federal cost principles, and all other applicable legal requirements; (WIOA sec. 121(b)(1)(A)(iv)); and

(e) Provide representation on the State and Local Workforce Development Boards as required and participate in Board committees as needed. (WIOA secs. 101(b)(iii) and 107(b)(2)(C) and (D))

<u>§ 678.425 What are the applicable career services that must be provided through the one-stop delivery system by required one-stop partners</u>?

(a) The applicable career services to be delivered by required one-stop partners are those services listed in § 678.430 that are authorized to be provided under each partner's program.

(b) One-stop centers provide services to individual customers based on individual needs, including the seamless delivery of multiple services to individual customers. There is no required sequence of services. (WIOA sec. 121(e)(1)(A).)

§ 678.430 What are career services?

Career services, as identified in sec. 134(c)(2) of WIOA, consist of three types:

(a) Basic career services must be made available and, at a minimum, must include the following services, as consistent with allowable program activities and Federal cost principles:

(1) Determinations of whether the individual is eligible to receive assistance from the adult, dislocated worker, or youth programs;

(2) Outreach, intake (including worker profiling), and orientation to information and other services available through the one-stop delivery system;

(3) Initial assessment of skill levels including literacy, numeracy, and English language proficiency, as well as aptitudes, abilities (including skills gaps), and supportive services needs;

(4) Labor exchange services, including—

(i) Job search and placement assistance, and, when needed by an individual, career counseling, including—

(A) Provision of information on in-demand industry sectors and occupations (as defined in sec. 3(23) of WIOA); and

(B) Provision of information on nontraditional employment; and

(ii) Appropriate recruitment and other business services on behalf of employers, including information and referrals to specialized business services other than those traditionally offered through the one-stop delivery system;

(5) Provision of referrals to and coordination of activities with other programs and services, including programs and services within the one-stop delivery system and, when appropriate, other workforce development programs;

(6) Provision of workforce and labor market employment statistics information, including the provision of accurate information relating to local, regional, and national labor market areas, including—

(i) Job vacancy listings in labor market areas;

(ii) Information on job skills necessary to obtain the vacant jobs listed; and

(iii) Information relating to local occupations in demand and the earnings, skill requirements, and opportunities for advancement for those jobs;

(7) Provision of performance information and program cost information on eligible providers of training services by program and type of providers;

(8) Provision of information, in usable and understandable formats and languages, about how the local area is performing on local performance accountability measures, as well as any additional performance information relating to the area's one-stop delivery system;

(9) Provision of information, in usable and understandable formats and languages, relating to the availability of supportive services or assistance, and appropriate referrals to those services and assistance, including: child care; child support; medical or child health assistance available through the State's Medicaid program and Children's

Health Insurance Program; benefits under SNAP; assistance through the earned income tax credit; and assistance under a State program for Temporary Assistance for Needy Families, and other supportive services and transportation provided through that program;

(10) Provision of information and assistance regarding filing claims for unemployment compensation, by which the one-stop must provide meaningful assistance to individuals seeking assistance in filing a claim for unemployment compensation.

(i) "Meaningful assistance" means:

(A) Providing assistance on-site using staff who are well-trained in unemployment compensation claims filing and the rights and responsibilities of claimants; or

(B) Providing assistance by phone or via other technology, as long as the assistance is provided by trained and available staff and within a reasonable time.

(ii) The costs associated in providing this assistance may be paid for by the State's unemployment insurance program, or the WIOA adult or dislocated worker programs, or some combination thereof.

(11) Assistance in establishing eligibility for programs of financial aid assistance for training and education programs not provided under WIOA.

(b) Individualized career services must be made available if determined to be appropriate in order for an individual to obtain or retain employment. These services include the following services, as consistent with program requirements and Federal cost principles:

(1) Comprehensive and specialized assessments of the skill levels and service needs of adults and dislocated workers, which may include—

(i) Diagnostic testing and use of other assessment tools; and

(ii) In-depth interviewing and evaluation to identify employment barriers and appropriate employment goals;

(2) Development of an individual employment plan, to identify the employment goals, appropriate achievement objectives, and appropriate combination of services for the participant to achieve his or her employment goals, including the list of, and information about, the eligible training providers (as described in § 680.180 of this chapter);

(3) Group counseling;

(4) Individual counseling;

(5) Career planning;

(6) Short-term pre-vocational services including development of learning skills, communication skills, interviewing skills, punctuality, personal maintenance skills, and professional conduct services to prepare individuals for unsubsidized employment or training;

(7) Internships and work experiences that are linked to careers (as described in § 680.170 of this chapter);

(8) Workforce preparation activities;

(9) Financial literacy services as described in sec. 129(b)(2)(D) of WIOA and § 681.500 of this chapter;

(10) Out-of-area job search assistance and relocation assistance; and

(11) English language acquisition and integrated education and training programs.

(c) Follow-up services must be provided, as appropriate, including: counseling regarding the workplace, for participants in adult or dislocated worker workforce investment activities who are placed in unsubsidized employment, for up to 12 months after the first day of employment.

§ 678.435 What are the business services provided through the one-stop delivery system, and how are they provided?

(a) Certain career services must be made available to local businesses, specifically labor exchange activities and labor market information described in §§ 678.430(a)(4)(ii) and 678.430(a)(6). Local areas must establish and develop relationships and networks with large and small employers and their intermediaries. (WIOA sec. 134(c)(1)(A)(iv).) Local areas also must develop, convene, or implement industry or sector partnerships. (WIOA sec. 134(c)(1)(A)(v).)

(b) Customized business services may be provided to employers, employer associations, or other such organizations (WIOA sec. 134(d)(1)(A)(ii)). These services are tailored for specific employers and may include:

(1) Customized screening and referral of qualified participants in training services to employers;

(2) Customized services to employers, employer associations, or other such organizations, on employment-related issues;

(3) Customized recruitment events and related services for employers including targeted job fairs;

(4) Human resource consultation services, including but not limited to assistance with:

(i) Writing/reviewing job descriptions and employee handbooks;

(ii) Developing performance evaluation and personnel policies;

(iii) Creating orientation sessions for new workers;

(iv) Honing job interview techniques for efficiency and compliance;

(v) Analyzing employee turnover; or

(vi) Explaining labor laws to help employers comply with wage/hour and safety/health regulations;

(5) Customized labor market information for specific employers, sectors, industries or clusters; and

(6) Other similar customized services.

(c) Local areas may also provide other business services and strategies that meet the workforce investment needs of area employers, in accordance with partner programs' statutory requirements and consistent with Federal cost principles. These business services may be provided through effective business intermediaries working in conjunction with the Local Board, or through the use of economic development, philanthropic, and other public and private resources in a manner determined appropriate by the Local Board and in cooperation with the State. Allowable activities, consistent with each partner's authorized activities, include, but are not limited to:

(1) Developing and implementing industry sector strategies (including strategies involving industry partnerships, regional skills alliances, industry skill panels, and sectoral skills partnerships);

(2) Customized assistance or referral for assistance in the development of a registered apprenticeship program;

(3) Developing and delivering innovative workforce investment services and strategies for area employers, which may include career pathways, skills upgrading, skill standard development and certification for recognized post-secondary credential or other employer use, and other effective initiatives for meeting the workforce investment needs of area employers and workers;

(4) Assistance to area employers in managing reductions in force in coordination with rapid response activities and with strategies for the aversion of layoffs, which may include strategies such as early identification of firms at risk of layoffs, use of feasibility studies to assess the needs of and options for at-risk firms, and the delivery of employment and training activities to address risk factors;

(5) The marketing of business services to appropriate area employers, including small and mid-sized employers; and

(6) Assisting employers with accessing local, State, and Federal tax credits.

(d) All business services and strategies must be reflected in the local plan, described in § 679.560(b)(3) of this chapter.

<u>§ 678.440 When may a fee be charged for the business services in this subpart</u>?

(a) There is no requirement that a fee-for-service be charged to employers.

(b) No fee may be charged for services provided in § 678.435(a).

(c) A fee may be charged for services provided under §§ 678.435(b) and (c). Services provided under § 678.435(c) may be provided through effective business intermediaries working in conjunction with the Local Board and may also be provided on a fee-for-service basis or through the leveraging of economic development, philanthropic, and other public and private resources in a manner determined appropriate by the Local

Board. The Local Workforce Development Board may examine the services provided compared with the assets and resources available within the local one-stop delivery system and through its partners to determine an appropriate cost structure for services, if any.

Subpart C—Memorandum of Understanding for the One-Stop Delivery System

§ 678.500 What is the Memorandum of Understanding for the one-stop delivery system and what must be included in the Memorandum of Understanding?

(a) The MOU is the product of local discussion and negotiation, and is an agreement developed and executed between the Local Board, with the agreement of the chief elected official and the one-stop partners, relating to the operation of the one-stop delivery system in the local area. Two or more local areas in a region may develop a single joint MOU, if they are in a region that has submitted a regional plan under sec. 106 of WIOA.

(b) The MOU must include:

(1) A description of services to be provided through the one-stop delivery system, including the manner in which the services will be coordinated and delivered through the system;

(2) A final plan, or an interim plan if needed, on how the costs of the services and the operating costs of the system will be funded, including:

(i) Funding of infrastructure costs of one-stop centers in accordance with §§ 678.700 through 678.755; and

(ii) Funding of the shared services and operating costs of the one-stop delivery system described in § 678.760;

(3) Methods for referring individuals between the one-stop operators and partners for appropriate services and activities;

(4) Methods to ensure that the needs of workers, youth, and individuals with barriers to employment, including individuals with disabilities, are addressed in providing access to services, including access to technology and materials that are available through the one-stop delivery system;

(5) The duration of the MOU and procedures for amending it; and

(6) Assurances that each MOU will be reviewed, and if substantial changes have occurred, renewed, not less than once every 3-year period to ensure appropriate funding and delivery of services.

(c) The MOU may contain any other provisions agreed to by the parties that are consistent with WIOA title I, the authorizing statutes and regulations of one-stop partner programs, and the WIOA regulations. (WIOA sec. 121(c).)

(d) When fully executed, the MOU must contain the signatures of the Local Board, one-stop partners, the chief elected official(s), and the time period in which the agreement is effective. The MOU must be updated not less than every 3 years to reflect any changes in the signatory official of the Board, one-stop partners, and chief elected officials, or one-stop infrastructure funding.

(e) If a one-stop partner appeal to the State regarding infrastructure costs, using the process described in § 678.750, results in a change to the one-stop partner's

infrastructure cost contributions, the MOU must be updated to reflect the final one-stop partner infrastructure cost contributions.

§ 678.505 Is there a single Memorandum of Understanding for the local area, or must there be separate Memoranda of Understanding between the Local Board and each partner?

(a) A single "umbrella" MOU may be developed that addresses the issues relating to the local one-stop delivery system for the Local Board, chief elected official and all partners. Alternatively, the Local Board (with agreement of chief elected official) may enter into separate agreements between each partner or groups of partners.

(b) Under either approach, the requirements described in § 678.500 apply. Since funds are generally appropriated annually, the Local Board may negotiate financial agreements with each partner annually to update funding of services and operating costs of the system under the MOU.

§ 678.510 How should the Memorandum of Understanding be negotiated?

(a) WIOA emphasizes full and effective partnerships between Local Boards, chief elected officials, and one-stop partners. Local Boards and partners must enter into good-faith negotiations. Local Boards, chief elected officials, and one-stop partners may also request assistance from a State agency responsible for administering the partner program, the Governor, State Board, or other appropriate parties on other aspects of the MOU.

(b) Local Boards and one-stop partners must establish, in the MOU, a final plan for how the Local Board and programs will fund the infrastructure costs of the one-stop centers. If a final plan regarding infrastructure costs is not complete when other sections

of the MOU are ready, an interim infrastructure cost plan may be included instead, as described in § 678.715(c). Once the final infrastructure cost plan is approved, the Local Board and one-stop partners must amend the MOU to include the final plan for funding infrastructure costs of the one-stop centers, including a description of the funding mechanism established by the Governor relevant to the local area. Infrastructure cost funding is described in detail in subpart E of this part. (WIOA sec. 121(h)(2).)

(c) The Local Board must report to the State Board, Governor, and relevant State agency when MOU negotiations with one-stop partners have reached an impasse.

(1) The Local Board and partners must document the negotiations and efforts that have taken place in the MOU. The State Board, one-stop partner programs, and the Governor may consult with the appropriate Federal agencies to address impasse situations related to issues other than infrastructure funding after attempting to address the impasse. Impasses related to infrastructure cost funding must be resolved using the State infrastructure cost funding mechanism described in § 678.730.

(2) The Local Board must report failure to execute an MOU with a required partner to the Governor, State Board, and the State agency responsible for administering the partner's program. Additionally, if the State cannot assist the Local Board in resolving the impasse, the Governor or the State Board must report the failure to the Secretary of Labor and to the head of any other Federal agency with responsibility for oversight of a partner's program.

Subpart D—One-Stop Operators

§ 678.600 Who may operate one-stop centers?

(a) One-stop operators may be a single entity (public, private, or nonprofit) or a consortium of entities. If the consortium of entities is one of one-stop partners, it must include a minimum of three of the one-stop partners described in § 678.400.

(b) The one-stop operator may operate one or more one-stop centers. There may be more than one one-stop operator in a local area.

(c) The types of entities that may be a one-stop operator include:

(1) An institution of higher education;

(2) An Employment Service State agency established under the Wagner-Peyser Act;

(3) A community-based organization, nonprofit organization, or workforce intermediary;

(4) A private for-profit entity;

(5) A government agency;

(6) A Local Board, with the approval of the chief local elected official and the Governor; or

(7) Another interested organization or entity, which is capable of carrying out the duties of the one-stop operator. Examples may include a local chamber of commerce or other business organization, or a labor organization.

(d) Elementary schools and secondary schools are not eligible as one-stop operators, except that a nontraditional public secondary school such as a night school, adult school, or an area career and technical education school may be selected.

(e) The State and Local Boards must ensure that, in carrying out WIOA programs and activities, one-stop operators:

(1) Disclose any potential conflicts of interest arising from the relationships of the operators with particular training service providers or other service providers (further discussed in § 679.430 of this chapter);

(2) Do not establish practices that create disincentives to providing services to individuals with barriers to employment who may require longer-term career and training services; and

(3) Comply with Federal regulations and procurement policies relating to the calculation and use of profits, including those at § 683.295 of this chapter, the Uniform Guidance at 2 CFR chapter II, and other applicable regulations and policies.

§ 678.605 How is the one-stop operator selected?

(a) Consistent with paragraphs (b) and (c) of this section, the Local Board must select the one-stop operator through a competitive process, as required by sec. 121(d)(2)(A) of WIOA, at least once every 4 years. A State may require, or a Local Board may choose to implement, a competitive selection process more than once every 4 years.

(b) In instances in which a State is conducting the competitive process described in paragraph (a) of this section, the State must follow the same policies and procedures it uses for procurement with non-Federal funds.

(c) All other non-Federal entities, including subrecipients of a State (such as local areas), must use a competitive process based on the principles of competitive

procurement in the Uniform Administrative Guidance set out at 2 CFR 200.318 through 200.326.

(d) Entities described in paragraph (c) of this section must first determine the nature of the process to be used to comply with sec. 121(d)(2)(A) of WIOA. The acceptable processes are:

(1) Procurement by sealed bids;

(2) Procurement by competitive proposals; or

(3) Procurement by sole source, permitted only if:

(i) Analysis of market conditions and other factors lead to a determination that it is necessary to use sole-source procurement because:

(A) There is only one entity that could serve as an operator; or

(B) Unusual and compelling urgency will not permit a delay resulting from competitive solicitation; or

(ii) Results of the competition conducted under paragraphs (d)(1) or (2) of this section were determined to be inadequate.

(e) Entities must prepare written documentation explaining the determination concerning the nature of the competitive process to be followed in selecting a one-stop operator.

<u>§ 678.610 How is sole source selection of one-stop operators accomplished</u>?

(a) As set forth in § 678.605(d)(3), under certain conditions, sole source procurement is an allowable method of procurement.

(b) In the event that sole source procurement is determined necessary and reasonable, in accordance with § 678.605(d)(3), written documentation must be prepared and maintained concerning the entire process of making such a selection.

(c) Such sole source procurement must include appropriate conflict of interest policies and procedures. These policies and procedures must conform to the specifications in § 679.430 of this chapter for demonstrating internal controls and preventing conflict of interest.

(d) A Local Board can be selected as a one-stop operator through sole source procurement only with agreement of the chief elected official in the local area and the Governor. The Local Board must establish sufficient conflict of interest policies and procedures and they must be approved by the Governor.

<u>§ 678.615 Can an entity serving as one-stop operator compete to be a one-stop operator under the procurement requirements of this subpart?</u>

(a) Local Boards can compete for and be selected as one-stop operators, as long as appropriate firewalls and conflict of interest policies and procedures are in place. These policies and procedures must conform to the specifications in § 679.430 of this chapter for demonstrating internal controls and preventing conflict of interest.

(b) State and local agencies can compete for and be selected as one-stop operators by the Local Board, as long as appropriate firewalls and conflict of interest policies and procedures are in place. These policies and procedures must conform to the specifications in § 679.430 of this chapter for demonstrating internal controls and preventing conflict of interest.

(c) In the case of single State areas where the State Board serves as the Local Board, the State agency is eligible to compete for and be selected as operator as long as appropriate firewalls and conflict of interest policies are in place and followed for the competition. These policies and procedures must conform to the specifications in § 679.430 of this chapter for demonstrating internal controls and preventing conflict of interest.

§ 678.620 What is the one-stop operator's role?

(a) At a minimum, the one-stop operator must coordinate the service delivery of required one-stop partners and service providers. Local Boards may establish additional roles of one-stop operator, including, but not limited to: coordinating service providers within the center and across the one-stop system, being the primary provider of services within the center, providing some of the services within the center, or coordinating service delivery in a multi-center area. The competition for a one-stop operator must clearly articulate the role of the one-stop operator.

(b) A one-stop operator may not perform the following functions: convene system stakeholders to assist in the development of the local plan; prepare and submit local plans (as required under sec. 107 of WIOA); be responsible for oversight of itself; manage or significantly participate in the competitive selection process for one-stop operators; select or terminate one-stop operators, career services, and youth providers; negotiate local performance accountability measures; and develop and submit budget for activities of the Local Board in the local area. An entity serving as a one-stop operator may perform some or all of these functions if it also serves in another capacity, if it has established sufficient firewalls and conflict of interest policies. The policies must

conform to the specifications in § 679.430 of this chapter for demonstrating internal controls and preventing conflict of interest.

§ 678.625 Can a one-stop operator also be a service provider?

Yes, but there must be appropriate firewalls in place in regards to the competition, and subsequent oversight, monitoring, and evaluation of performance of the service provider. The operator cannot develop, manage or conduct the competition of a service provider in which it intends to compete. In cases where an operator is also a service provider, there must be firewalls and internal controls within the operator-service provider entity, as well as specific policies and procedures at the Local Board level regarding oversight, monitoring, and evaluation of performance of the service provider. The firewalls must conform to the specifications in § 679.430 of this chapter for demonstrating internal controls and preventing conflict of interest.

§ 678.630 Can State merit staff still work in a one-stop where the operator is not a governmental entity?

Yes. State merit staff can continue to perform functions and activities in the one-stop career center. The Local Board and one-stop operator must establish a system for management of merit staff in accordance with State policies and procedures. Continued use of State merit staff may be included in the competition for and final contract with the one-stop operator.

§ 678.635 What is the effective date of the provisions of this subpart?

(a) No later than June 30, 2017, one-stop operators selected under the competitive process described in this subpart must be in place and operating the one-stop.

(b) By June 30, 2016, every Local Board must demonstrate it is taking steps to prepare for competition of its one-stop operator. This demonstration may include, but is not limited to, market research, requests for information, and conducting a cost and price analysis.

Subpart E—One-Stop Operating Costs

§ 678.700 What are one-stop infrastructure costs?

(a) Infrastructure costs of one-stop centers are nonpersonnel costs that are necessary for the general operation of the one-stop center, including:

(1) Rental of the facilities;

(2) Utilities and maintenance;

(3) Equipment (including assessment-related products and assistive technology for individuals with disabilities); and

(4) Technology to facilitate access to the one-stop center, including technology used for the center's planning and outreach activities.

(b) Local Boards may consider common identifier costs as costs of one-stop infrastructure.

(c) Each entity that carries out a program or activities in a local one-stop center, described in §§ 678.400 through 678.410, must use a portion of the funds available for the program and activities to maintain the one-stop delivery system, including payment of the infrastructure costs of one-stop centers. These payments must be in accordance with this subpart; Federal cost principles, which require that all costs must be allowable,

reasonable, necessary, and allocable to the program; and all other applicable legal requirements.

§ 678.705 What guidance must the Governor issue regarding one-stop infrastructure funding?

(a) The Governor, after consultation with chief elected officials, the State Board, and Local Boards, and consistent with guidance and policies provided by the State Board, must develop and issue guidance for use by local areas, specifically:

(1) Guidelines for State-administered one-stop partner programs for determining such programs' contributions to a one-stop delivery system, based on such programs' proportionate use of such system consistent with Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, including determining funding for the costs of infrastructure; and

(2) Guidance to assist Local Boards, chief elected officials, and one-stop partners in local areas in determining equitable and stable methods of funding the costs of infrastructure at one-stop centers based on proportionate benefits received, and consistent with Federal cost principles.

(b) The guidance must include:

(1) The appropriate roles of the one-stop partner programs in identifying one-stop infrastructure costs;

(2) Approaches to facilitate equitable and efficient cost allocation that results in a reasonable cost allocation methodology where infrastructure costs are charged to each

partner in proportion to relative benefits received, consistent with Federal cost principles; and

(3) The timelines regarding notification to the Governor for not reaching local agreement and triggering the State-funded infrastructure mechanism described in § 678.730, and timelines for a one-stop partner to submit an appeal in the State-funded infrastructure mechanism.

§ 678.710 How are infrastructure costs funded?

Infrastructure costs are funded either through the local funding mechanism described in § 678.715 or through the State funding mechanism described in § 678.730.

§ 678.715 How are one-stop infrastructure costs funded in the local funding mechanism?

(a) In the local funding mechanism, the Local Board, chief elected officials, and one-stop partners agree to amounts and methods of calculating amounts each partner will contribute for one-stop infrastructure funding, include the infrastructure funding terms in the MOU, and sign the MOU. The local one-stop funding mechanism must meet all of the following requirements:

(1) The infrastructure costs are funded through cash and fairly evaluated in-kind partner contributions and include any funding from philanthropic organizations or other private entities, or through other alternative financing options, to provide a stable and equitable funding stream for ongoing one-stop delivery system operations;

(2) Contributions must be negotiated between one-stop partners, chief elected officials, and the Local Board and the amount to be contributed must be included in the MOU;

(3) The one-stop partner program's proportionate share of funding must be calculated in accordance with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200 based upon a reasonable cost allocation methodology whereby infrastructure costs are charged to each partner in proportion to relative benefits received, and must be allowable, reasonable, necessary, and allocable;

(4) Partner shares must be periodically reviewed and reconciled against actual costs incurred, and adjusted to ensure that actual costs charged to any one-stop partners are proportionate and equitable to the benefit received by the one-stop partners and their respective programs or activities.

(b) In developing the section of the MOU on one-stop infrastructure funding fully described in § 678.755, the Local Board and chief elected officials will:

(1) Ensure that the one-stop partners adhere to the guidance identified in § 678.705 on one-stop delivery system infrastructure costs.

(2) Work with one-stop partners to achieve consensus and informally mediate any possible conflicts or disagreements among one-stop partners.

(3) Provide technical assistance to new one-stop partners and local grant recipients to ensure that those entities are informed and knowledgeable of the elements contained in the MOU and the one-stop infrastructure costs arrangement.

(c) The MOU may include an interim infrastructure funding agreement, including as much detail as the Local Board has negotiated with one-stop partners, if all other parts of the MOU have been negotiated, in order to allow the partner programs to operate in the one-stop centers. The interim infrastructure agreement must be finalized within 6

months of when the MOU is signed. If the infrastructure interim infrastructure agreement is not finalized within that timeframe, the Local Board must notify the Governor, as described in § 678.725.

§ 678.720 What funds are used to pay for infrastructure costs in the local one-stop infrastructure funding mechanism?

(a) In the local one-stop infrastructure funding mechanism, one-stop partner programs can determine what funds they will use to fund infrastructure costs. The use of these funds must be in accordance with the requirements in this subpart, and with the relevant partner's authorizing statutes and regulations, including, for example, prohibitions against supplanting non-Federal resources, statutory limitations on administrative costs, and all other applicable legal requirements. In the case of partners administering adult education and literacy programs authorized by title II of WIOA or the Carl D. Perkins Career and Technical Education Act of 2006, these funds may include Federal funds that are available for State administration of adult education and literacy programs authorized by title II of WIOA or for State administration of post-secondary level programs and activities under the Perkins Act, and non-Federal funds that the partners contribute to meet these programs' matching or maintenance of effort requirements. These funds also may include local administrative funds available to local entities or consortia of local entities that have been delegated authority to serve as one-stop local partners by a State eligible agency as permitted by § 678.415(b) and (e).

(b) There are no specific caps on the amount or percent of overall funding a one-stop partner may contribute to fund infrastructure costs under the local one-stop funding mechanism, except that contributions for administrative costs may not exceed the amount

available for administrative costs under the authorizing statute of the partner program. However, amounts contributed for infrastructure costs must be allowable and based on proportionate use by or benefit to the partner program, taking into account the total cost of the one-stop infrastructure as well as alternate financing options, and must be consistent with 2 CFR chapter II, including the Federal cost principles.

§ 678.725 What happens if consensus on infrastructure funding is not reached at the local level between the Local Board, chief elected officials, and one-stop partners?

If, after July 1, 2016, and each subsequent July 1, the Local Board, chief elected officials, and one-stop partners do not reach consensus on methods of sufficiently funding local infrastructure through the local infrastructure cost funding mechanism, and include that consensus agreement in the signed MOU, then the Local Board must notify the Governor and the Governor must administer funding through the State one-stop funding mechanism, as described in § 678.730. (WIOA sec. 121(h)(2))

§ 678.730 What is the State one-stop infrastructure funding mechanism?

(a) In the State one-stop infrastructure funding mechanism, the Governor, after consultation with the chief elected officials, Local Boards, and the State Board, determines one-stop partner contributions, based upon a methodology where infrastructure costs are charged to each partner in proportion to relative benefits received and consistent with the partner program's authorizing laws and regulations, 2 CFR chapter II, including the Federal cost principles, and other applicable legal requirements described in § 678.735(a).

(b) The State Board develops an allocation formula to allocate funds to local areas to support the infrastructure costs for local area one-stop centers for all local areas

that did not use the local funding mechanism, and the Governor uses that formula to allocate the funds. This is described in detail in § 678.745.

§ 678.735 How are partner contributions determined in the State one-stop funding mechanism?

(a) In the State one-stop funding mechanism, the Governor, after consultation with State and Local Boards and chief elected officials, will determine the amount each partner must contribute to assist in paying the infrastructure costs of one-stop centers. The Governor must calculate amounts based on the proportionate use of the one-stop centers by each partner, consistent with chapter II of title 2, Code of Federal Regulations (or any corresponding similar regulation or ruling), taking into account the costs of administration of the one-stop delivery system for purposes not related to one-stop centers for each partner such as costs associated with maintaining the Local Board, or information technology systems. The Governor will also take into account the statutory requirements for each partner program, all other applicable legal requirements, and the partner program's ability to fulfill such requirements.

(b) In certain situations, the Governor does not determine the infrastructure cost contributions for one-stop partner programs.

(1) The Governor will not determine the contribution amounts for infrastructure funds for Native American grantees described in 20 CFR part 684. (WIOA sec. 121(h)(2)(D)(iii).) The appropriate portion of funds to be provided by Native American grantees to pay for one-stop infrastructure must be determined as part of the development of the MOU described in § 678.500 and specified in that MOU.

(2) In a State in which the State constitution or a State statute places policy-making authority that is independent of the authority of the Governor in an entity or official with respect to the funds provided for adult education and literacy activities, post-secondary career and technical education activities, or vocational rehabilitation services, the chief officer of that entity or the official must determine the contribution amounts for infrastructure funds in consultation with the Governor. (WIOA sec. 121(h)(2)(C)(ii).)

(c) Limitations. Per WIOA sec. 122(h)(2)(D), the amount established by the Governor under paragraph (a) of this section may not exceed the following caps:

(1) WIOA formula programs and employment service. The portion of funds required to be contributed under the WIOA youth, adult, or dislocated worker programs, or under the Wagner- Peyser Act (29 U.S.C. 49 et seq.) must not exceed 3 percent of the amount of Federal funds provided to carry out that program in the State for a program year.

(2) Other one-stop partners. The portion of funds required to be contributed must not exceed 1.5 percent of the amount of Federal funds provided to carry out that education program or employment and training program in the State for a fiscal year. For purposes of Carl D. Perkins Career and Technical Education Act of 2006, the cap on contributions is determined based on the funds made available for State administration of post-secondary level programs and activities.

(3) Vocational rehabilitation. Within a State, the entity or entities administering the programs described in WIOA sec. 121(b)(1)(B)(iv) the allotment is based on the one State allotment, even in instances where that allotment is shared between two State

agencies, and will not be required to provide from that program a cumulative portion that exceeds—

(i) 0.75 percent of the amount of Federal funds provided to carry out such program in the State for Fiscal Year 2016;

(ii) 1.0 percent of the amount provided to carry out such program in the State for Fiscal Year 2017;

(iii) 1.25 percent of the amount provided to carry out such program in the State for Fiscal Year 2018; and

(iv) 1.5 percent of the amount provided to carry out such program in the State for Fiscal Year 2019 and following years.

(4) Federal direct spending programs. For local areas that have not reached a one-stop infrastructure funding agreement by consensus, an entity administering a program funded with direct spending as defined in sec. 250(c)(8) of the Balanced Budget and Emergency Deficit Control Act of 1985, as in effect on February 15, 2014 (2 U.S.C. 900(c)(8)), must not be required to provide more for infrastructure costs than the amount that the Governor determined (as described in § 678.735(a)).

(d) If the above limitations result in funding less than each partner's proportionate share and contribute to inadequate funding of the allocation amount determined under § 678.745(b), the Governor may direct the Local Board, chief elected officials, and one-stop partners to reenter negotiations to reduce the infrastructure costs to reflect the amount of funds that are available for such costs, discuss proportionate share of each one-stop partner, or to identify alternative sources of financing for one-stop infrastructure funding, but, in any event, a partner will only be required to pay an amount

that is consistent with the proportionate benefit received by the partner, the program's authorizing laws and regulations, the Federal cost principles, and other applicable legal requirements.

(1) The Local Board, chief elected officials, and one-stop partners, after renegotiation, may come to agreement and sign an MOU and proceed under the local one-stop funding mechanism.

(2) If after renegotiation, agreement amongst partners still cannot be reached or alternate financing identified, the Governor may adjust the specified allocation, in accordance with the amounts available and the limitations described in § 678.735(c).

§ 678.740 What funds are used to pay for infrastructure costs in the State one-stop infrastructure funding mechanism?

(a) In the State one-stop infrastructure funding mechanism, infrastructure costs for WIOA title I programs, including Native American Programs described in 20 CFR part 684, can be paid using program funds, administrative funds, or both. Infrastructure costs for the Senior Community Service Employment Program under title V of the Older Americans Act (42 U.S.C. 3056 et seq.) can also be paid using program funds, administrative funds, or both. (WIOA sec. 121(h)(2)(D)(i)(II).)

(b) In the State one-stop infrastructure funding mechanism, infrastructure costs for other required one-stop partner programs (listed in §§ 678.400 through 678.410) are limited to the program's administrative funds, as appropriate. (WIOA sec. 121(h)(2)(D)(i)(I).)

(c) In the State one-stop infrastructure funding mechanism, infrastructure costs for the adult education program authorized by title II of WIOA must be paid from the

funds that are available for State administration or from non-Federal funds that the partner contributes to meet the program's matching or maintenance of effort requirement. Infrastructure costs for title II of WIOA may also be paid from funds available for local administration of programs and activities to eligible providers or consortia of eligible providers delegated responsibilities to act as a local one-stop partner pursuant to § 678.415(b).

(d) In the State one-stop infrastructure funding mechanism, infrastructure costs for the Carl D. Perkins Career and Technical Education Act of 2006 must be paid from the Federal funds that are available for State administration of post-secondary level programs and activities under the Perkins Act, or from non-Federal funds that the partner contributes to meet the program's matching or maintenance of effort requirement. Infrastructure costs for the Carl D. Perkins Career and Technical Education Act of 2006 may also be paid from funds available for local administration of post-secondary level programs and activities to eligible recipients or consortia of eligible recipients delegated responsibilities to act as a local one-stop partner pursuant to § 678.415(e).

<u>§ 678.745 How is the allocation formula used by the Governor determined in the State one-stop funding mechanism</u>?

(a) The State Board must develop an allocation formula to be used by the Governor to allocate funds to the local areas that did not successfully use the local funding mechanism. The allocation formula must take into account the number of one-stop centers in a local area, the population served by such centers, the services provided by such centers, and other factors relating to the performance of such centers that the

State Board determines are appropriate and that are consistent with Federal cost principles. (WIOA sec. 121(h)(3)(B).)

(b) Using the funds contributed by the one-stop partners described in § 678.735, the Governor will then use this formula to allocate funds to the local areas that did not use the local funding mechanism to fund one-stop center infrastructure costs, so long as that funding distribution is consistent with Federal cost principles for each of the affected one-stop partners.

<u>§ 678.750 When and how can a one-stop partner appeal a one-stop infrastructure amount designated by the State under the State infrastructure funding mechanism</u>?

(a) The Governor must establish a process, described under sec. 121(h)(2)(E) of WIOA, for a one-stop partner administering a program described in §§ 678.400 through 678.410 to appeal the Governor's determination regarding the one-stop partner's portion of funds to be provided for one-stop infrastructure costs. This appeal process must be described in the Unified State Plan. (WIOA secs. 121(h)(2)(E) and 102(b)(2)(D)(i)(IV).)

(b) The appeal may be made on the ground that the Governor's determination is inconsistent with proportionate share requirements in § 678.735(a), the cost contribution limitations in § 678.735(b), or the cost contribution caps in § 678.735(c).

(c) The process must ensure prompt resolution of the appeal in order to ensure the funds are distributed in a timely manner, consistent with the requirements of § 683.630 of this chapter.

(d) The one-stop partner must submit an appeal in accordance with State's deadlines for appeals specified in the guidance issued under § 678.705(b)(3), or if the State has not set a deadline, within 21 days from the Governor's determination.

§ 678.755 What are the required elements regarding infrastructure funding that must be included in the one-stop Memorandum of Understanding?

The MOU, fully described in § 678.500, must contain the following information whether the local areas use either the local one-stop or the State one-stop infrastructure funding method:

(a) The period of time in which this infrastructure funding agreement is effective. This may be a different time period than the duration of the MOU.

(b) Identification of an infrastructure and shared services budget that will be periodically reconciled against actual costs incurred and adjusted accordingly to ensure that it reflects a cost allocation methodology that demonstrates how infrastructure costs are charged to each partner in proportion to relative benefits received, and that complies with chapter II of title 2 of the Code of Federal Regulations (or any corresponding similar regulation or ruling).

(c) Identification of all one-stop partners, chief elected officials, and Local Board participating in the infrastructure funding arrangement.

(d) Steps the Local Board, chief elected officials, and one-stop partners used to reach consensus or an assurance that the local area followed the guidance for the State one-stop infrastructure funding process.

(e) Description of the process to be used between partners to resolve issues during the MOU duration period when consensus cannot be reached.

(f) Description of the periodic modification and review process to ensure equitable benefit among one-stop partners.

§ 678.760 How do one-stop partners jointly fund other shared costs under the Memorandum of Understanding?

(a) In addition to jointly funding infrastructure costs, one-stop partners listed in §§ 678.400 through 678.410 must use a portion of funds made available under their programs' authorizing Federal law (or fairly evaluated in-kind contributions) to pay the additional costs relating to the operation of the one-stop delivery system, which must include applicable career services.

(b) Additionally, one-stop partners may jointly fund shared services to the extent consistent with their programs' Federal authorizing statutes and other applicable legal requirements. Shared services' costs may include the costs of shared services that are authorized for and may be commonly provided through the one-stop partner programs to any individual, such as initial intake, assessment of needs, appraisal of basic skills, identification of appropriate services to meet such needs, referrals to other one-stop partners, and business services. Shared operating costs may also include shared costs of the Local Board's functions.

(c) These shared costs must be allocated according to the proportion of benefit received by each of the partners, consistent with the Federal law authorizing the partner's program, and consistent with all other applicable legal requirements, including Federal cost principles in chapter II of title 2 of the Code of Federal Regulations (or any corresponding similar regulation or ruling) requiring that costs are reasonable, necessary, and allocable.

(d) Any shared costs agreed upon by the one-stop partners must be included in the MOU.

Subpart F—One-Stop Certification

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

(a) The State Board, in consultation with chief elected officials and Local Boards, must establish objective criteria and procedures for Local Boards to use when certifying one-stop centers.

(1) The State Board must review and update the criteria every 2 years as part of the review and modification of State Plans pursuant to § 676.135 of this chapter.

(2) The criteria must be consistent with the Governor's and State Board's guidelines, guidance and policies on infrastructure funding decisions, described in § 678.705. The criteria must evaluate the one-stop centers and one-stop delivery system for effectiveness, including customer satisfaction, physical and programmatic accessibility, and continuous improvement.

(3) When the Local Board is the one-stop operator as described in § 679.410 of this chapter, the State Board must certify the one-stop center.

(b) Evaluations of effectiveness must include how well the one-stop center integrates available services for participants and businesses, meets the workforce development needs of participants and the employment needs of local employers, operates in a cost-efficient manner, coordinates services among the one-stop partner programs, and provides maximum access to partner program services even outside

regular business hours. These evaluations must take into account feedback from one-stop customers. They must also include evaluations of how well the one-stop center ensures equal opportunity for individuals with disabilities to participate in or benefit from one-stop center services. These evaluations must include criteria evaluating how well the centers and delivery systems take actions to comply with the disability-related regulations implementing WIOA sec. 188, set forth at 29 CFR part 37. Such actions include, but are not limited to:

(1) Providing reasonable accommodations for individuals with disabilities;

(2) Making reasonable modifications to policies, practices, and procedures where necessary to avoid discrimination against persons with disabilities;

(3) Administering programs in the most integrated setting appropriate;

(4) Communicating with persons with disabilities as effectively as with others; and

(5) Providing appropriate auxiliary aids and services, including assistive technology devices and services, where necessary to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, the program or activity.

(c) Evaluations of continuous improvement must include how well the one-stop center supports the achievement of the negotiated local levels of performance for the indicators of performance for the local area described in sec. 116(b)(2) of WIOA and 20 CFR part 677. Other continuous improvement factors may include a regular process for identifying and responding to technical assistance needs, a regular system of continuing professional staff development, and having systems in place to capture and respond to specific customer feedback.

(d) Local Boards must assess at least once every 3 years the effectiveness, physical and programmatic accessibility, and continuous improvement of one-stop centers and the one-stop delivery systems using the criteria and procedures developed by the State Board. The Local Board may establish additional criteria, or set higher standards for service coordination, than those set by the State criteria. Local Boards must review and update the criteria every 2 years as part of the Local Plan update process described in § 676.580 of this chapter. Local Boards must certify one-stop centers in order to be eligible to receive infrastructure funds in the State infrastructure funding mechanism described in § 678.730.

(e) All one-stop centers must comply with applicable physical accessibility requirements, as set forth in 29 CFR part 37.

Subpart G—Common Identifier

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

(a) The common one-stop delivery system identifier is "American Job Center."

(b) As of July 1, 2016, each one-stop delivery system must include the "American Job Center" identifier or "a proud partner of the American Job Center network" on all products, programs, activities, services, facilities, and related property and materials used in the one-stop system.

(c) One-stop partners, States or local areas may use additional identifiers on their products, programs, activities, services, facilities, and related property and materials.

Department of Education

34 CFR Chapters III and IV

For the reasons stated in the preamble, the Department of Education proposes to amend 34 CFR chapters III and IV as follows:

PART 361 – STATE VOCATIONAL REHABILITATION SERVICES PROGRAM

4. The authority citation for part 361 continues to read as follows:

Authority: 29 U.S.C. 709(c), unless otherwise noted.

5. Add subpart D of part 361 to read as follows:

Subpart D – Unified and Combined State Plans Under Title I of the Workforce Innovation and Opportunity Act

Sec.	
361.100	What is the purpose of the Unified and Combined State Plans?
361.105	What are the general requirements for the Unified State Plan?
361.110	What are the program-specific requirements in the Unified State Plan for the adult, dislocated worker, and youth workforce investment activities in Workforce Innovation and Opportunity Act title I?
361.115	What are the program-specific requirements in the Unified State Plan for the Adult Education and Family Literacy Act program in Workforce Innovation and Opportunity Act title II?
361.120	What are the program-specific requirements in the Unified State Plan for Wagner-Peyser Act Employment Service programs in title III of the Workforce Innovation and Opportunity Act?
361.125	What are the program-specific requirements in the Unified State Plan for the State Vocational Rehabilitation program in Workforce Innovation and Opportunity Act title IV?
361.130	What is the submission and approval process of the Unified State Plan?
361.135	What are the requirements for modification of the Unified State Plan?
361.140	What are the general requirements for submitting a Combined State Plan?
361.143	What is the submission and approval process of the Combined State Plan?
361.145	What are the requirements for modifications of the Combined State Plan?

Subpart D – Unified and Combined State Plans Under Title I of the Workforce Innovation and Opportunity Act

§ 361.100 What is the purpose of the Unified and Combined State Plans?

(a) The Unified and Combined State Plans provide the framework for States to outline a strategic vision of, and goals for, how their workforce development systems will achieve the purposes of Workforce Innovation and Opportunity Act (WIOA).

(b) The Unified and Combined State Plans serve as 4-year action plans to develop, align, and integrate the State's systems and provide a platform to achieve the State's vision and strategic and operational goals. A Unified or Combined State Plan is intended to:

(1) Align, in strategic coordination, the six core programs required in the Unified State Plan pursuant to § 361.105(b), and additional optional programs that may be part of the Combined State Plan pursuant to § 361.140;

(2) Direct investments in economic, education, and workforce training programs to focus on providing relevant education and training to ensure that individuals, including youth and individuals with barriers to employment, have the skills to compete in the job market and that employers have a ready supply of skilled workers;

(3) Apply strategies for job-driven training consistently across Federal programs, and;

(4) Enable economic, education, and workforce partners to build a skilled workforce through innovation in, and alignment of, employment, training, and education programs.

§ 361.105 What are the general requirements for the Unified State Plan?

(a) The Unified State Plan must be submitted in accordance with § 361.130 and joint planning guidelines issued by the Secretary of Labor and the Secretary of Education.

(b) The Governor of each State must submit, in accordance with § 361.130, a Unified or Combined State Plan to the Secretary of Labor to be eligible to receive funding for the workforce development system's six core programs:

(1) The adult, dislocated worker, and youth programs authorized under subtitle B of title I of WIOA and administered by the U.S. Department of Labor;

(2) The Adult Education and Family Literacy Act (AEFLA) program authorized under title II of WIOA and administered by the U.S. Department of Education;

(3) The Wagner-Peyser Act Employment Services programs amended by title III of WIOA and administered by the U.S. Department of Labor; and

(4) The State Vocational Rehabilitation program amended by title IV of WIOA and administered by the U.S. Department of Education.

(c) The Unified State Plan must outline the State's 4-year strategy for the core programs described in paragraph (b) of this section and meet the requirements of sec. 102(b) of WIOA, as explained in the joint planning guidance issued by the Secretary of Labor and the Secretary of Education.

(d) The Unified State Plan must include strategic and operational planning elements to facilitate the development of an aligned, coordinated, and comprehensive workforce development system. The Unified State Plan must include:

(1) Strategic planning elements that describe the State's strategic vision and goals for preparing an educated and skilled workforce under sec. 102(b)(1) of WIOA. The

strategic planning elements must be informed by and include an analysis of the State's economic conditions and employer and workforce needs, including education and skill needs.

(2) Strategies for aligning the core programs and optional programs, as well as other resources available to the State, to achieve the strategic vision and goals in accordance with sec. 102(b)(1)(E) of WIOA.

(3) Operational planning elements in accordance with sec. 102(b)(2) of WIOA that support the strategies for aligning the core programs and other resources available to the State to achieve the State's vision and goals and a description of how the State Workforce Development Board will implement its functions, in accordance with sec. 101(d) of WIOA. Operational planning elements must include:

(i) A description of how the State strategy will be implemented by each core program's lead State agency;

(ii) State operating systems, including data systems, and policies that will support the implementation of the State's strategy identified in paragraph (d)(1) of this section;

(iii) Program-specific requirements for the core programs required by WIOA sec. 102(b)(2)(D);

(iv) Assurances required by sec. 102(b)(2)(E) of WIOA and others deemed necessary by the Secretaries of Labor and Education under sec. 102(b)(2)(E)(x) of WIOA; and

(v) Any additional operational planning requirements imposed by the Secretary of Labor or the Secretary of Education under sec. 102(b)(2)(C)(viii) of WIOA.

§ 361.110 What are the program-specific requirements in the Unified State Plan for the adult, dislocated worker, and youth workforce investment activities in Workforce Innovation and Opportunity Act title I?

The program-specific requirements for the adult, dislocated worker, and youth workforce investment activities that must be included in the Unified State Plan are described in sec. 102(b)(2)(D) of WIOA. Additional planning requirements may be required by the Secretary of Labor or the Secretary of Education in accordance with joint planning guidelines issued by the Secretary of Labor and the Secretary of Education.

§ 361.115 What are the program-specific requirements in the Unified State Plan for the Adult Education and Family Literacy Act program in Workforce Innovation and Opportunity Act title II?

The program-specific requirements for the AEFLA program in title II that must be included in the Unified State Plan are described in secs. 102(b)(2)(D)(ii) and 102(b)(2)(C) of WIOA.

(a) With regard to the description required in sec. 102(b)(2)(D)(ii)(I) of WIOA pertaining to content standards, the Unified State Plan must describe how the eligible agency will, by July 1, 2016, align its content standards for adult education with State-adopted challenging academic content standards under the Elementary and Secondary Education Act of 1965, as amended.

(b) With regard to the description required in sec. 102(b)(2)(C)(iv) of WIOA pertaining to the methods and factors the State will use to distribute funds under the core programs, for title II of WIOA, the Unified State Plan must include -

(1) How the eligible agency will award multi-year grants on a competitive basis to eligible providers in the State; and

(2) How the eligible agency will provide direct and equitable access to funds using the same grant or contract announcement and application procedure.

(c) With regard to the description required under sec. 102(b)(2)(C)(v)(I) of WIOA pertaining to the integration of workforce and education data on core programs, unemployment insurance programs, and education through post-secondary education, for title II of WIOA, the Unified State Plan must include how the State will ensure interoperability of data systems in the reporting on core indicators of performance and performance reports required to be submitted by the State.

§ 361.120 What are the program-specific requirements in the Unified State Plan for Wagner-Peyser Act Employment Service programs in title III of the Workforce Innovation and Opportunity Act?

Wagner-Peyser Act Employment Services programs amended by title III are subject to requirements in sec. 102(b) of WIOA and any additional requirements imposed by the Secretary of Labor under sec. 102(b)(2)(C)(viii) of WIOA, in accordance with joint planning guidelines issued by the Secretary of Labor and the Secretary of Education.

§ 361.125 What are the program-specific requirements in the Unified State Plan for the State Vocational Rehabilitation program in Workforce Innovation and Opportunity Act title IV?

The program specific requirements for the vocational rehabilitation services portion of the Unified or Combined State Plan are set forth in sec. 101(a) of the Rehabilitation Act of 1973, as amended. All submission requirements of the Vocational

Rehabilitation Services portion of the Unified or Combined State Plan are in addition to the jointly developed strategic and operational content requirements prescribed by secs. 102(b) and 103 of WIOA.

§ 361.130 What is the submission and approval process of the Unified State Plan?

(a) The Unified State Plan described in § 361.105 must be submitted in accordance with planning guidelines issued jointly by the Secretaries of Labor and Education which explain the submission and approval process in WIOA sec. 102(c).

(b) A State must submit its Unified State Plan to the Secretary of Labor pursuant to a process identified by the Secretary.

(1) The initial Unified State Plan must be submitted no later than 120 days prior to the commencement of the second full program year of WIOA.

(2) The subsequent Unified State Plan must be submitted no later than 120 days prior to the end of the 4-year period described in paragraph (b)(1) of this section.

(3) For purposes of paragraph (b) of this section, "program year" means July 1 through June 30 of any year.

(c) The State must provide an opportunity for public comment on and input into the development of the Unified State Plan prior to its submission.

(1) The opportunity for public comment must include an opportunity for comment by representatives of Local Boards and chief elected officials, businesses, representatives of labor organizations, community-based organizations, adult education providers, institutions of higher education, other stakeholders with an interest in the services provided by the six core programs, and the general public, including individuals with disabilities.

(2) Consistent with the “Sunshine Provision” of WIOA in sec. 101(g), the State Board must make information regarding the Unified State Plan available to the public through electronic means and regularly occurring open meetings in accordance with State law. The Unified State Plan must describe the State's process and timeline for ensuring a meaningful opportunity for public comment.

(d) Upon receipt of the Unified State Plan from the State, the Secretary of Labor will ensure that the entire Unified State Plan is submitted to the Secretary of Education pursuant to a process developed by the Secretaries.

(e) The Unified State Plan is subject to the approval of both the Secretary of Labor and the Secretary of Education.

(f) Before the Secretary of Labor and the Secretary of Education approve the Unified State Plan, the vocational rehabilitation portion of the Unified State Plan described in WIOA sec. 102(b)(2)(D)(iii) must be approved by the Commissioner of the Rehabilitation Services Administration.

(g) The Secretary of Labor and the Secretary of Education will review and approve the Unified State Plan within 90 days of receipt by the appropriate Secretary, unless the Secretary of Labor or the Secretary of Education determines in writing within that period that:

(1) The plan is inconsistent with a core program’s requirements;

(2) The Unified State Plan is inconsistent with any requirement of sec. 102 of WIOA; or

(3) The plan is incomplete or otherwise insufficient to determine whether it is consistent with a core program’s requirements or other requirements of WIOA.

(h) If neither the Secretary of Labor nor the Secretary of Education makes the written determination described in paragraph (g) of this section within 90 days of the receipt by the Secretaries, the Unified State Plan will be considered approved.

§ 361.135 What are the requirements for modification of the Unified State Plan?

(a) In addition to the required modification review set forth in paragraph (b) of this section, a Governor may submit a modification of its Unified State Plan at any time during the 4-year period of the plan.

(b) Modifications are required, at a minimum:

(1) At the end of the first 2-year period of any 4-year State Plan, wherein the State Board must review the Unified State Plan, and the Governor must submit modifications to the plan to reflect changes in labor market and economic conditions or other factors affecting the implementation of the Unified State Plan;

(2) When changes in Federal or State law or policy substantially affect the strategies, goals, and priorities upon which the Unified State Plan is based;

(3) When there are changes in the statewide vision, strategies, policies, State adjusted levels of performance, the methodology used to determine local allocation of funds, reorganizations which change the working relationship with system employees, changes in organizational responsibilities, changes to the membership structure of the State Board or alternative entity, and similar substantial changes to the State's workforce investment system.

(c) Modifications to the Unified State Plan are subject to the same public review and comment requirements in § 361.130(c) that apply to the development of the original Unified State Plan.

(d) Unified State Plan modifications must be approved by the Secretary of Labor and the Secretary of Education, based on the approval standards applicable to the original Unified State Plan under § 361.130. This approval must come after the approval of the Commissioner of the Rehabilitation Services Administration for modification of any portion of the plan described in sec. 102(b)(2)(D)(iii) of WIOA.

§ 361.140 What are the general requirements for submitting a Combined State Plan?

(a) A State may choose to develop and submit a 4-year Combined State Plan in lieu of the Unified State Plan described in § 361.105.

(b) A State that submits a Combined State Plan covering an activity or program described in paragraph (d) of this section that is approved under WIOA sec. 103(c) or determined complete under the law relating to the program will not be required to submit any other plan or application in order to receive Federal funds to carry out the core programs or the program or activities described under paragraph (d) of this section that are covered by the Combined State Plan.

(c) If a State develops a Combined State Plan, it must be submitted in accordance with the process described in § 361.143.

(d) If a State chooses to submit a Combined State Plan, the Plan must include the six core programs and one or more of the optional programs and activities described in sec. 103(a)(2) of WIOA. The optional programs and activities that may be included in the Combined State Plan are:

(1) Career and technical education programs authorized under the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 et seq.);

(2) Temporary Assistance for Needy Families or TANF, authorized under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.);

(3) Employment and training programs authorized under sec. 6(d)(4) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(d)(4));

(4) Work programs authorized under sec. 6(o) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(o));

(5) Trade adjustment assistance activities under chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2271 et seq.);

(6) Services for veterans authorized under chapter 41 of title 38, United States Code;

(7) Programs authorized under State unemployment compensation laws (in accordance with applicable Federal law);

(8) Senior Community Service Employment Programs under title V of the Older Americans Act of 1956 (42 U.S.C. 3056 et seq.);

(9) Employment and training activities carried out by the Department of Housing and Urban Development;

(10) Employment and training activities carried out under the Community Services Block Grant Act (42 U.S.C. 9901 et seq.); and

(11) Reintegration of offenders programs authorized under sec. 212 of the Second Chance Act of 2007 (42 U.S.C. 17532).

(e) A Combined State Plan must contain:

(1) For the core programs, the information required by sec. 102(b) of WIOA and § 361.105, as explained in the joint planning guidance issued by the Secretaries;

(2) For the optional programs, except as described in paragraph (h) of this section, the information required by the law authorizing and governing that program to be submitted to the appropriate Secretary, any other applicable legal requirements, and any common planning requirements described in sec. 102(b) of WIOA, as explained in the joint planning guidance issued by the Secretaries;

(3) A description of joint planning methods across all programs included in the Combined State Plan; and

(4) An assurance that all of the entities responsible for planning or administering the programs described in the Combined State Plan have had a meaningful opportunity to review and comment on all portions of the Plan.

(f) Each optional program included in the Combined State Plan remains subject to the applicable program-specific requirements of the Federal law and regulations, and any other applicable legal or program requirements, governing the implementation and operation of that program.

(g) For purposes of §§ 361.140 through 361.145 the term "appropriate Secretary" means the head of the Federal agency who exercises either plan or application approval authority for the program or activity under the Federal law authorizing the program or activity or, if there are no planning or application requirements, who exercises administrative authority over the program or activity under that Federal law.

(h) States that include employment and training activities carried out under the Community Services Block Grant (CSBG) Act (42 U.S.C. 9901 et seq.) under a Combined State Plan would submit all other required elements of a complete CSBG State

Plan directly to the Federal agency that administers the program, according to the requirements of Federal law and regulations.

§ 361.143 What is the submission and approval process of the Combined State Plan?

(a) For purposes of § 361.140(a), if a State chooses to develop a Combined State Plan it must submit the Combined State Plan in accordance with the requirements described below and the joint planning guidelines, which will further explain the submission and approval procedures for the Combined State Plan, issued by the Secretaries.

(b) The State must submit to the Secretaries of Labor and Education and to the Secretary of the agency with responsibility for approving the program's plan or determining it complete under the law governing the program, as part of its Combined State Plan, any plan, application, form, or any other similar document that is required as a condition for the approval of Federal funding under the applicable program or activity. Such submission must occur in accordance with a process identified by the relevant Secretaries in paragraph (a) of this section.

(c) The Combined State Plan will be approved or disapproved in accordance with the requirements of sec. 103(c) of WIOA.

(1) The portion of the Combined State Plan covering programs administered by the Departments of Labor and Education must be reviewed, and approved or disapproved, by the appropriate Secretary within 90 days beginning on the day the plan is received by the appropriate Secretary from the State, except as provided in paragraph (d) of this section.

(2) If an appropriate Secretary other than the Secretary of Labor or the Secretary of Education has authority to approve or determine complete a portion of the Combined State Plan for a program or activity described in § 361.140(d), that portion of the plan must be reviewed, and approved, disapproved, or have a determination of completeness, by the appropriate Secretary within 120 days beginning on the day the plan is received by the appropriate Secretary from the State except as provided in paragraph (e) of this section.

(d) The review and determination of approval or disapproval, or determination of completeness, of the relevant portion of the Combined State Plan must occur within 90 days for all Department of Labor and Education programs included in the State Plan and within 120 days for the programs administered by other Federal Agencies unless the appropriate Secretary determines in writing within that period that:

(1) The Plan is inconsistent with the requirements of the six core programs or the Federal laws authorizing or applicable to the program or activity involved, including the criteria for approval of a plan or application, or determining the plan's completeness, if any, under such law;

(2) The portion of the Plan describing the six core programs or the program or activity described in paragraph (a) of this section involved does not satisfy the criteria as provided in sec. 102 or 103 of WIOA, as applicable; or

(3) The Plan is incomplete, or otherwise insufficient to determine whether it is consistent with a core program's requirements, other requirements of WIOA, or the Federal laws authorizing, or applicable to, the program or activity described in

§ 361.140(d), including the criteria for approval of a plan or application, if any, under such law.

(e) If the Secretary of Labor, the Secretary of Education, or the appropriate Secretary does not make the written determination described in paragraph (d) of this section within the relevant period of time after submission of the Plan, that portion of the Combined State Plan over which the Secretary has jurisdiction will be considered approved.

(f) Special rule. In paragraphs (d)(1) and (3) of this section, the term "criteria for approval of a plan or application," with respect to a State or a core program or a program under the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 et seq.), includes a requirement for agreement between the State and the appropriate Secretaries regarding State performance measures or State performance accountability measures, as the case may be, including levels of performance.

§ 361.145 What are the requirements for modifications of the Combined State Plan?

(a) For the core program portions of the Combined State Plan, modifications are required at the end of the first 2-year period of any 4-year Combined State Plan. The State Board must review the Combined State Plan, and the Governor must submit a modification of the Combined State Plan to reflect changes in labor market and economic conditions or in other factors affecting the implementation of the Combined State Plan.

(b) In addition to the required modification review described in paragraph (a) of this section, a State may submit a modification of its Combined State Plan at any time during the 4-year period of the plan.

(c) For any programs and activities described in § 361.140(d) that are included in a State's Combined State Plan, the State –

(1) May decide if the modification requirements under WIOA sec. 102(c)(3) that apply to the core programs will apply to the optional programs or activities described in § 361.140(d) that are included in the Combined State Plan or may comply with the procedures and requirements applicable to only the particular optional program or activity; and

(2) Must submit, in accordance with the procedure described in § 361.143, any other modification, amendment, or revision required by the Federal law authorizing, or applicable to, the program or activity described in § 361.140(d). If the underlying programmatic requirements change for Federal laws authorizing such programs, a State must either modify its Combined State Plan or submit a separate plan to the appropriate Federal agency in accordance with the new Federal law authorizing the optional program or activity and other legal requirements applicable to such program or activity. A State also may amend its Combined State Plan to add an optional program or activity described in § 361.140(d).

(d) Modifications of the Combined State Plan are subject to the same public review and comment requirements that apply to the development of the original Combined State Plan as described in § 361.130(c) except that, if the modification, amendment, or revision affects the administration of a particular optional program and has no impact on the Combined State Plan as a whole or the integration and administration of the core and optional programs at the State level, a State may comply

instead with the procedures and requirements applicable to the particular optional program.

(e) Modifications for the core program portions of the Combined State Plan must be approved by the Secretary of Labor and the Secretary of Education, based on the approval standards applicable to the original Combined State Plan under § 361.143. This approval must come after the approval of the Commissioner of the Rehabilitation Services Administration for modification of any portion of the Combined State Plan described in sec. 102(b)(2)(D)(iii) of WIOA.

(f) Modifications for the portions of the Combined State Plan for any optional program or activity described in § 361.140(d) must be submitted for approval by only the appropriate Secretary, based on the approval standards applicable to the original Combined State Plan under § 361.143, if the State elects, or in accordance with the procedures and requirements applicable to the particular optional program if the modification, amendment, or revision affects the administration of only that particular optional program and has no impact on the Combined State Plan as a whole or the integration and administration of the core and optional programs at the State level.

6. Revise subpart E of part 361 to read as follows:

Subpart E – Performance Accountability Under Title I of the Workforce Innovation and Opportunity Act

Sec.

361.150	What definitions apply to Workforce Innovation and Opportunity Act performance measurement and reporting requirements?
361.155	What are the primary indicators of performance under the Workforce Innovation and Opportunity Act?
361.160	What information is required for State performance reports?
361.165	May a State require additional indicators of performance?

361.170 How are State adjusted levels of performance for primary indicators established?
361.175 What responsibility do States have to use quarterly wage record information for performance accountability?
361.180 What State actions are subject to a financial sanction under Workforce Innovation and Opportunity Act?
361.185 When are sanctions applied for failure to report?
361.190 When are sanctions applied for failure to achieve adjusted levels of performance?
361.195 What should States expect when a sanction is applied to the Governor's Reserve Allotment?
361.200 What other administrative actions will be applied to States' performance requirements?
361.205 What performance indicators apply to local areas?
361.210 How are local performance levels established?
361.215 Under what circumstances are local areas eligible for State Incentive Grants?
361.220 Under what circumstances may a corrective action or sanction be applied to local areas for poor performance?
361.225 Under what circumstances may local areas appeal a reorganization plan?
361.230 What information is required for the eligible training provider performance reports?
361.235 What are the reporting requirements for individual records for core Workforce Innovation and Opportunity Act title I, III, and IV programs?
361.240 What are the requirements for data validation of State annual performance reports?

Subpart E – Performance Accountability Under Title I of the Workforce Innovation and Opportunity Act

§ 361.150 What definitions apply to Workforce Innovation and Opportunity Act performance measurement and reporting requirements?

(a) Participant. A reportable individual who has received staff-assisted services after satisfying all applicable programmatic requirements for the provision of services, such as eligibility determination.

(1) For the Vocational Rehabilitation (VR) program, a Participant is an individual who has an approved and signed Individualized Plan for Employment (IPE) and has begun to receive services.

(2) The following individuals are not Participants:

(i) Individuals who have not completed at least 12 contact hours in the Adult Education and Family Literacy Act (AEFLA) program;

(ii) Individuals who only use the self-service system; and

(iii) Individuals who only receive information services or activities.

(3) Programs must include participants in their performance calculations.

(b) Reportable individual. An individual who has taken action that demonstrates an intent to use program services and who meets specific reporting criteria of the core program, including:

(1) Individuals who provide identifying information;

(2) Individuals who only use the self-service system; and

(3) Individuals who only receive information on services or activities.

(c) Exit. As defined for the purpose of performance calculations, exit is the point after which an individual who has received services through any program meets the following criteria:

(1) For the adult, dislocated worker, and youth programs under Workforce Innovation and Opportunity Act (WIOA) title I, the AEFLA program under WIOA title II, and the Employment Services authorized by the Wagner-Peyser Act as amended by WIOA title III, exit date is the last date of service:

(i) The exit date cannot be determined until 90 days of no services has elapsed. At that point the exit date is applied retroactively to the last date of service.

(A) Ninety days of no service does not include self-service or information-only activities or follow-up services and

(B) There are no future services planned, excluding follow-up services.

(ii) [Reserved]

(2)(i) For the VR program as amended by WIOA title IV:

(A) The participant's record of service is closed in accordance with §361.56 because the participant has achieved an employment outcome; or

(B) The participant's service record is closed because the individual has not achieved an employment outcome or the individual has been determined ineligible after receiving services in accordance with §361.43.

(ii) Notwithstanding any other provision of this section, a participant will not be considered as meeting the definition of exit from the Vocational Rehabilitation program if the individual's service record is closed because the individual has achieved a supported employment outcome in an integrated setting but not in competitive integrated employment.

<u>§ 361.155 What are the primary indicators of performance under the Workforce Innovation and Opportunity Act</u>?

(a) All States submitting either a Unified or Combined State Plan under §§ 361.130 and 361.143, must propose expected levels of performance for each of the primary indicators of performance for the adult, dislocated worker, and youth programs under title I of WIOA, the AEFLA program under title II of WIOA, the Wagner-Peyser Act as amended by title III of WIOA, and the VR program as amended by WIOA.

(1) The six primary indicators for performance are:

(i) The percentage of participants, who are in unsubsidized employment during the second quarter after exit from the program;

(ii) The percentage of participants, who are in unsubsidized employment during the fourth quarter after exit from the program;

(iii) Median earnings of participants, who are in unsubsidized employment during the second quarter after exit from the program;

(iv) The percentage of participants who obtained a recognized post-secondary credential or a secondary school diploma, or its recognized equivalent during participation in or within 1 year after exit from the program. A participant who has obtained a secondary school diploma or its recognized equivalent is only included in this measure if the participant is also employed or is enrolled in an education or training program leading to a recognized post-secondary credential within 1 year from program exit;

(v) The percentage of participants who during a program year, are in an education or training program that leads to a recognized post-secondary credential or employment and who are achieving measurable skill gains, defined as documented academic, technical, occupational or other forms of progress, towards such a credential or employment.

(vi) Effectiveness in serving employers, based on indicators developed as required by sec. 116(b)(2)(A)(iv) of WIOA.

(2) [Reserved]

(b) The indicators in paragraphs (a)(1)(i) through (vi) of this section apply to the adult, dislocated worker, AEFLA and VR programs.

(c) The indicators in paragraphs (a)(1)(i) through (iii) and (vi) of this section apply to the Employment Services.

(d) For the youth program under title I of WIOA, the indicators are:

(1) Percentage of participants who are in education or training activities, or in unsubsidized employment, during the second quarter after exit from the program;

(2) Percentage of participants in education or training activities, or in unsubsidized employment, during the fourth quarter after exit from the program;

(3) Median earnings of participants who are in unsubsidized employment during the second quarter after exit from the program;

(4) The percentage of participants who obtained a recognized post-secondary credential or a secondary school diploma, or its recognized equivalent, during participation or up to 1 year after exit. A participant who has obtained a secondary school diploma or its recognized equivalent is only included in this measure if the participant is also employed or is enrolled in an education or training program leading to a recognized post-secondary credential within 1 year from program exit;

(5) The percentage of participants who during a program year, are in an education or training program that leads to a recognized post-secondary credential or employment and who are achieving measurable skill gains, defined as documented academic, technical, occupational or other forms of progress towards such a credential or employment;

(6) Effectiveness in serving employers, based on indicators developed as required by sec. 116(b)(2)(iv) of WIOA.

§ 361.160 What information is required for State performance reports?

(a) Section 116(d)(2) of WIOA requires States to submit a State performance report. The State performance report must be submitted annually using a template the

Departments will disseminate and must provide, at a minimum, information on the actual performance levels achieved consistent with § 361.175 with respect to:

(1) The total number of participants served, and the total number of participants who exited each of the core programs identified in sec. 116(b)(3)(A)(ii) of WIOA, including disaggregated counts of those who participated in and exited a core program, by:

(i) Individuals with barriers to employment as defined in WIOA sec. 3(24); and

(ii) Co-enrollment in any of the programs in WIOA sec 116(b)(3)(A)(ii).

(2) Information on the performance levels achieved for the primary indicators for all of the core programs identified in § 361.155 including disaggregated levels for:

(i) Individuals with barriers to employment as defined in WIOA sec. 3(24);

(ii) Age;

(iii) Sex; and

(iv) Race and ethnicity.

(3) The total number of participants and exiters who received career and training services for the most recent program year and the three preceding program years, as applicable to the program;

(4) Information on the performance levels achieved for the primary indicators consistent with § 361.155 for career and training services for the most recent program year and the 3 preceding program years, as applicable to the program;

(5) The percentage of participants in a program who obtained unsubsidized employment related to the training received (often referred to as training-related employment) through WIOA title I-B programs;

(6) The amount of funds spent on each type of career and training service for the most recent program year and the 3 preceding program years, as applicable to the program;

(7) The average cost per participant for those participants who received career and training services, respectively, during the most recent program year and the 3 preceding program years for, as applicable to the program;

(8) The percentage of a State's annual allotment under WIOA sec. 132(b) that the State spent on administrative costs; and

(9) information that facilitates comparisons of programs with programs in other States.

(10) For WIOA title I programs, a State performance narrative, which, for States in which a local area is implementing a pay-for-performance contracting strategy, at a minimum provides:

(i) A description of pay-for-performance contract strategies being used for programs;

(ii) The performance of service providers entering into contracts for such strategies, measured against the levels of performance specified in the contracts for such strategies; and

(iii) An evaluation of the design of the programs and performance strategies and, when available, the satisfaction of employers and participants who received services under such strategies.

(b) The disaggregation of data for the State performance report must be done in compliance with WIOA sec. 116(d)(6)(C).

(c) The State performance reports must include a mechanism of electronic access to the State's local area and ETP performance reports.

(d) States must comply with these requirements from sec. 116 of WIOA as explained in joint guidance issued by the Departments of Education and Labor, which may include information on reportable individuals as determined by the Secretaries.

§ 361.165 May a State require additional indicators of performance?

States may identify additional indicators of performance for the six core programs. These indicators must be included in the Unified or Combined State Plan.

§ 361.170 How are State adjusted levels of performance for primary indicators established?

(a) A State must submit in the State Plan expected levels of performance on the primary indicators for each core program as required by sec. 116(b)(iv) of WIOA as explained in joint guidance issued by the Secretaries of Education and Labor.

(1) The initial State Plan submitted under WIOA must contain expected levels of performance for the first 2 years of the State Plan period.

(2) States must submit expected levels of performance for the third and fourth year of the State Plan before the third program year consistent with §§ 361.135 and 361.145.

(b) The State must reach agreement on levels of performance with the Secretaries of Education and Labor for each of the core programs based on the following factors:

(1) How the levels of performance compare with State adjusted levels of performance established for other States;

(2) The application of an objective statistical model established by the Secretaries of Education and Labor, subject to paragraph (d) of this section;

(3) How the levels promote continuous improvement in performance based on the primary indicators and ensure optimal return on investment of Federal funds; and

(4) The extent to which the levels assist the State in meeting the performance goals established by the Secretaries of Education and Labor for the core programs in accordance with the Government Performance and Results Act of 1993, and its amendments.

(c) An objective statistical adjustment model will be developed and disseminated by the Secretaries. The model will be based on:

(1) Differences among States in actual economic conditions, including unemployment rates and job losses or gains in particular industries; and

(2) The characteristics of participants, including:

(i) Indicators of poor work history;

(ii) Lack of work experience;

(iii) Lack of educational or occupational skills attainment;

(iv) Dislocation from high-wage and high-benefit employment;

(v) Low levels of literacy;

(vi) Low levels of English proficiency;

(vii) Disability status;

(viii) Homelessness;

(ix) Ex-offender status; and

(x) Welfare dependency.

(d) The objective statistical adjustment model developed under paragraph (c) of this section will be:

(1) Applied to the core programs' primary indicators upon availability of data which is necessary to populate the model and apply it to the programs;

(2) Subject to paragraph (d)(1) of this section, used before the beginning of a program year in order to establish State performance targets for the upcoming program year; and

(3) Subject to paragraph (d)(1) of this section, used to revise performance levels at the end of a program year based on actual circumstances, consistent with sec. 116(b)(3)(vii) of WIOA.

(e) States must comply with these requirements from sec. 116 of WIOA as explained in joint guidance issued by the Departments of Education and Labor.

<u>§ 361.175 What responsibility do States have to use quarterly wage record information for performance accountability</u>?

(a) States must, consistent with State laws, use quarterly wage record information in measuring the progress on State adjusted levels of performance for the primary indicators outlined in § 361.155 and local performance indicators identified in § 361.205. The use of social security numbers from participants and such other information as is necessary to measure the progress of those participants through quarterly wage record information is authorized.

(b) "Quarterly wage record information" means intrastate and interstate wages paid to an individual, the social security number (or numbers, if more than one) of the

individual and the name, address, State, and the Federal employer identification number of the employer paying the wages to the individual.

(c) The Governor may designate a State agency [or appropriate State entity] to assist in carrying out the performance reporting requirements for WIOA core programs and eligible training providers. The Governor or such agency [or appropriate State entity] is responsible for:

(1) Facilitating data matches;

(2) Data quality reliability, protection against disaggregation that would violate privacy.

§ 361.180 What State actions are subject to a financial sanction under Workforce Innovation and Opportunity Act?

The following failures by a State are subject to financial sanction under WIOA sec. 116(d):

(a) The failure by a State to submit the State annual performance report required under WIOA sec. 116(d)(2); or

(b) The failure by a State to meet adjusted levels of performance for the primary indicators of performance in accordance with sec. 116(f) of WIOA.

§ 361.185 When are sanctions applied for failure to report?

(a) Sanctions will be applied when a State fails to submit the State annual performance reports required under sec. 116(d)(2) of WIOA. It is a failure to report if the State either:

(1) Does not submit a State annual performance report by the date for timely submission set in performance reporting guidance; or

(2) Submits a State annual performance report by the date for timely submission, but the report is incomplete.

(b) Sanctions will not be assessed if the reporting failure is due to exceptional circumstances outside of the State's control. Exceptional circumstances may include, but are not limited to:

(1) Natural disasters;

(2) Unexpected personnel transitions; and

(3) Unexpected technology related impacts.

(c) In the event that a State may not be able to submit a complete and accurate performance report by the deadline for timely reporting:

(1) The State must notify the Secretary of Labor or Secretary of Education as soon as possible of a potential impact on the ability to submit their State annual performance reports by no later than 30 days prior to the established deadline in order to not be considered failing to report.

(2) In circumstances where unexpected events occur within the 30-day period before the deadline for submission of the State annual performance reports, the Secretary of Labor and Secretary of Education will review requests for extending the reporting deadline in accordance with the Departments' procedures explained in guidance on reporting timelines.

<u>§ 361.190 When are sanctions applied for failure to achieve adjusted levels of performance</u>?

(a) States' negotiated levels of performance will be adjusted through the application of the statistical adjustment model established under § 361.170 to account for

actual conditions experienced during a program year and characteristics of participants, annually at the close of each program year.

(b) States that fail to meet adjusted levels of performance for the primary indicators of performance outlined in § 361.155 for any year will receive technical assistance, including assistance in the development of a performance improvement plan provided by the Secretary of Labor or Secretary of Education.

(c) State failure to meet adjusted levels of performance will be determined through three criteria:

(1) Overall State program scores, based on the percent achieved by a program on each of the six primary indicators compared to the adjusted goal for each primary indicator. The average of the percentage of the adjusted goal achieved for each primary indicator will constitute the overall program score for the State;

(2) Overall State indicator scores, based on the percent achieved by each program on each of the individual primary indicators compared to the adjusted goal. The average of the percentage of the adjusted goal achieved for each of the six core programs' will constitute an overall indicator score for the State; and

(3) Individual indicator scores, based on the percent achieved by each program on each of the individual primary indicators compared to the adjusted goals.

(d) A performance failure occurs when:

(1) Any overall State program score or overall State indicator score falls below 90 percent for the program year; or

(2) Any of the States' individual indicator scores fall below 50 percent for the program year.

(e) Sanctions based on performance failure will be applied to States if, for 2 consecutive years, the State fails to meet 90 percent of the overall State program score, 90 percent of the overall State indicator score, or 50 percent on any individual indicator score for the same program or indicator.

§ 361.195 What should States expect when a sanction is applied to the Governor's Reserve Allotment?

(a) The Secretary of Labor and the Secretary of Education will reduce the Governor's Reserve Allotment by 5 percent of the maximum available amount for the immediately succeeding program year if:

(1) The State fails to submit the State annual performance reports as required under WIOA sec. 116(d)(2), as defined in § 361.185; or

(2) The State fails to meet State adjusted levels of performance for the same primary performance indicator(s) under either § 361.190(d)(1) or (2) for the second consecutive year as defined in § 361.190.

(b) If the State fails under paragraphs (a)(1) and (2) of this section in the same program year, the Secretary of Labor and the Secretary of Education will reduce the Governor's Reserve Allotment by 10 percent of the maximum available amount for the immediately succeeding program year.

(c) If a State's Governor's Reserve Allotment is reduced:

(1) The reduced amount will not be returned to the State in the event that the State later improves performance or submits its annual performance report; and

(2) The Governor's reserve will continue to be set at the reduced level in each subsequent year until the Secretary of Labor or the Secretary of Education, dependent

upon the impacted program, determines that the State met the State adjusted levels of performance for the applicable primary performance indicators and has submitted all of the required performance reports.

(d) A State may request review of a sanction the U.S. Department of Labor imposes in accordance with the provisions of § 683.800 of this chapter.

§ 361.200 What other administrative actions will be applied to States' performance requirements?

(a) In addition to sanctions for failure to report or failure to meet adjusted levels of performance, States will be subject to administrative actions in the case of poor performance.

(b) States' performance achievement on the individual primary indicators will be assessed in addition to the overall program score and overall indicator score. Based on this assessment, as clarified and explained in guidance, for performance on any individual primary indicator, the Secretary of Labor or the Secretary of Education will require the State to establish a performance risk plan to address continuous improvement on the individual primary indicator.

§ 361.205 What performance indicators apply to local areas?

(a) Each local workforce investment area in a State under title I of WIOA is subject to the same primary indicators of performance for the core programs for WIOA title I under § 361.155(a)(1) and (d) that apply to the State.

(b) In addition to the indicators described in paragraph (a) of this section, under § 361.165, the Governor may apply additional indicators of performance to local areas in the State.

(c) States must annually make local area performance reports available to the public using a template that the Departments will disseminate in guidance, including by electronic means. The State must provide electronic access to the public local area performance report in its annual State performance report.

(d) The local area performance report must provide information on the actual performance levels for the local area based on quarterly wage records consistent with the requirements for States under § 361.175.

(e) The local area performance report must include:

(1) Performance levels achieved by the local area for the indicators for the adult, dislocated worker, and youth programs under title I of WIOA in § 361.155(a)(1) and (3);

(2) Performance levels achieved by the local area for the adult, dislocated worker, and youth programs under title I of WIOA in § 361.160(a);

(3) The percentage of a local area's allotment under WIOA sec. 128(b) and sec. 133(b) that the local area spent on administrative costs; and

(4) Other information that facilitates comparisons of programs with programs in other local areas (or planning regions if the local area is part of a planning region).

(f) States must comply with any requirements from sec. 116(d)(3) of WIOA as explained in guidance, including the use of the performance reporting template, issued by the Department of Labor.

<u>§ 361.210 How are local performance levels established</u>?

(a) The objective statistical adjustment model required under sec. 116(b)(3)(A)(viii) of WIOA and described in the § 361.170 must be:

(1) Used to establish local performance targets for the upcoming program year, and

(2) Used to revise performance levels at the end of a program year based on actual circumstances, consistent with WIOA sec. 116(c)(3).

(b) The Governor, Local Board, and chief elected official must reach agreement on local targets and levels based on a negotiations process before the start of a program year with the use of the objective statistical model described in paragraph (a) of this section. The negotiations will include a discussion of circumstances not accounted for in the model and will take into account the extent to which the levels promote continuous improvement. The objective statistical model will be applied at the end of the program year based on actual conditions experienced.

(c) The negotiations process described in paragraph (b) of this section must be developed by the Governor and disseminated to all Local Boards and chief elected officials.

(d) The Local Boards may apply performance measures to service providers that differ from the performance measures that apply to the local area. These performance measures should be established after considering:

(1) The established local performance levels,

(2) The services provided by each provider; and

(3) The populations the service providers are intended to serve.

§ 361.215 Under what circumstances are local areas eligible for State Incentive Grants?

(a) The Governor is not required to award local incentive funds. The Governor may use non-Federal funds to create incentives for Local Boards to implement pay-for-

performance contract strategies for the delivery of training services described in WIOA sec. 134(c)(3) or activities described in WIOA sec. 129(c)(2) in the local areas served by the Local Boards.

(b) Pay-for-performance contract strategies must be implemented in accordance with §§ 683.500 through 683.530 of this chapter and § 361.160.

<u>§ 361.220 Under what circumstances may a corrective action or sanction be applied to local areas for poor performance</u>?

(a) If a local area fails to meet the levels of performance agreed to under § 361.210 for the primary indicators of performance in the adult, dislocated worker, and youth programs authorized under WIOA title I in any program year, technical assistance must be provided by the Governor or, upon the Governor's request, by the Secretary of Labor.

(1) A State must establish the threshold for failure in meeting levels of performance for a local area before negotiating the adjusted levels of performance for the local area.

(2) The technical assistance may include:

(i) Assistance in the development of a performance improvement plan,

(ii) The development of a modified local or regional plan; or

(iii) Other actions designed to assist the local area in improving performance.

(b) If a local area fails to meet the levels of performance agreed to under § 361.210 for the primary indicators of performance for the adult, dislocated worker, and youth programs authorized under WIOA title I for a third consecutive program year, the

Governor must take corrective actions. The corrective actions must include the development of a reorganization plan under which the Governor:

(1) Requires the appointment and certification of a new Local Board, consistent with the criteria established under § 679.350 of this chapter;

(2) Prohibits the use of eligible providers and one-stop partners that have been identified as achieving poor levels of performance; or

(3) Takes such other significant actions as the Governor determines are appropriate.

§ 361.225 Under what circumstances may local areas appeal a reorganization plan?

(a) The Local Board and chief elected official for a local area that is subject to a reorganization plan under WIOA sec. 116(g)(2)(A) may appeal to the Governor to rescind or revise the reorganization plan not later than 30 days after receiving notice of the reorganization plan. The Governor must make a final decision within 30 days after receipt of the appeal.

(b) The Local Board and chief elected official may appeal the final decision of the Governor to the Secretary of Labor not later than 30 days after receiving the decision from the Governor. Any appeal of the Governor's final decision must be:

(1) Appealed jointly by the Local Board and chief elected official to the Secretary under § 683.650 of this chapter; and

(2) Must be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, 200 Constitution Ave. N.W., Washington DC 20210, Attention: ASET. A copy of the appeal must be simultaneously provided to the Governor.

(c) Upon receipt of the joint appeal from the Local Board and chief elected official, the Secretary must make a final decision within 30 days. In making this determination the Secretary may consider any comments submitted by the Governor in response to the appeals.

(d) The decision by the Governor to impose a reorganization plan becomes effective at the time it is issued and remains effective unless the Secretary of Labor rescinds or revises the reorganization plan under WIOA sec. 116(g)(2)(B)(ii).

§ 361.230 What information is required for the eligible training provider performance reports?

(a) States are required to make available, and publish, annually using a template the Departments will disseminate including through electronic means, the eligible training provider performance reports for eligible training providers who provide services under sec. 122 of WIOA that are described in §§ 680.400 through 680.530 of this chapter. These reports at a minimum must include, consistent with § 361.175 and with respect to each program of study that is eligible to receive funds under WIOA:

(1) The total number of participants who received training services under the adult and dislocated worker programs authorized under WIOA title I for the most recent year and the 3 preceding program years, including:

(i) The number of participants under the adult and dislocated worker programs disaggregated by barriers to employment;

(ii) The number of participants under the adult and dislocated worker programs disaggregated by race, ethnicity, sex, and age;

(iii) The number of participants under the adult and dislocated worker programs disaggregated by the type of training entity for the most recent program year and the 3 preceding program years;

(2) The total number of participants who exit a program of study or its equivalent, including disaggregate counts by the type of training entity during the most recent program year and the 3 preceding program years;

(3) The average cost-per-participant for participants who received training services for the most recent program year and the 3 preceding program years disaggregated by type of training entity;

(4) The total number of individuals exiting from the program of study (or the equivalent); and

(5) The levels of performance achieved for the primary indicators of performance identified in §§ 361.155(a)(1)(i) through (iv) with respect to all individuals in a program of study (or the equivalent).

(b) Registered apprenticeship programs are not required to submit performance information. See § 680.470 of this chapter. If a registered apprenticeship program voluntarily submits performance information to a State, the State must include this information in the report.

(c) The State must provide electronic access to the public eligible training provider performance report in its annual State performance report.

(d) States must comply with any requirements from sec. 116(d)(4) of WIOA as explained in guidance issued by the Department of Labor.

(e) The Governor may designate one or more State agencies such as a State education agency or State educational authority to assist in overseeing eligible training provider performance and facilitating the production and dissemination of eligible training provider performance reports. These agencies may be the same agencies that are designated as responsible for administering the eligible training providers list as provided under § 680.500 of this chapter. The Governor or such agencies, or authorities, is responsible for:

(1) Facilitating data matches between ETP records and UI wage data in order to produce the report;

(2) The creation and dissemination of the reports as described in paragraphs (a) through (d) of this section;

(3) Coordinating the dissemination of the performance reports with the eligible training provider list and the information required to accompany the list, as provided in § 680.500 of this chapter.

<u>§ 361.235 What are the reporting requirements for individual records for core Workforce Innovation and Opportunity Act title I, III, and IV programs</u>?

(a) On a quarterly basis, each State must submit to the Secretary of Labor or Secretary of Education, as appropriate, individual records that include demographic information, information on services received, and information on resulting outcomes, as appropriate, for each reportable individual in a core program administered by the Secretary of Labor or Education. Such records submitted to the Department of Labor must be submitted in one record that is integrated across all core Department of Labor programs.

(b) For individual records submitted to the Secretary of Labor, records must be integrated across all core programs administered by the Secretary of Labor in one single file.

(c) States must comply with any other requirements from sec. 116(d)(2) of WIOA as explained in guidance issued by the Department of Labor.

§ 361.240 What are the requirements for data validation of State annual performance reports?

(a) States must establish procedures, consistent with guidelines issued by the Secretary of Education or Secretary of Labor, to submit complete annual performance reports that contain information that is valid and reliable.

(b) If a State fails to meet standards in paragraph (a) of this section as determined by the Secretary of Labor or Secretary of Education, the appropriate Secretary will provide technical assistance and may require the State to develop and implement corrective actions, which may require the State to provide training for its subrecipients.

(c) The Secretary of Labor and the Secretary of Education will provide training and technical assistance to States in order to implement this section.

7. Add subpart F to part 361 to read as follows:

Subpart F – Description of the One-Stop System Under Title I of the Workforce Innovation and Opportunity Act

Sec.

361.300 What is the one-stop delivery system?
361.305 What is a comprehensive one-stop center and what must be provided there?
361.310 What is an affiliated site and what must be provided there?
361.315 Can a stand-alone Wagner-Peyser employment service office be designated as an affiliated one-stop site?

361.320 Are there any requirements for networks of eligible one-stop partners or specialized centers?
361.400 Who are the required one-stop partners?
361.405 Is Temporary Assistance for Needy Families a required one-stop partner?
361.410 What other entities may serve as one-stop partners?
361.415 What entity serves as the one-stop partner for a particular program in the local area?
361.420 What are the roles and responsibilities of the required one-stop partners?
361.425 What are the applicable career services that must be provided through the one-stop delivery system by required one-stop partners?
361.430 What are career services?
361.435 What are the business services provided through the one-stop delivery system, and how are they provided?
361.440 When may a fee be charged for the business services in this subpart?
361.500 What is the Memorandum of Understanding for the one-stop delivery system and what must be included in the Memorandum of Understanding?
361.505 Is there a single Memorandum of Understanding for the local area, or must there be separate Memoranda of Understanding between the Local Board and each partner?
361.510 How should the Memorandum of Understanding be negotiated?
361.600 Who may operate one-stop centers?
361.605 How is the one-stop operator selected?
361.610 How is sole source selection of one-stop operators accomplished?
361.615 Can an entity serving as one-stop operator compete to be a one-stop operator under the procurement requirements of this subpart?
361.620 What is the one-stop operator's role?
361.625 Can a one-stop operator also be a service provider?
361.630 Can State merit staff still work in a one-stop where the operator is not a governmental entity?
361.635 What is the effective date of the provisions of this subpart?
361.700 What are one-stop infrastructure costs?
361.705 What guidance must the Governor issue regarding one-stop infrastructure funding?
361.710 How are infrastructure costs funded?
361.715 How are one-stop infrastructure costs funded in the local funding mechanism?
361.720 What funds are used to pay for infrastructure costs in the local one-stop infrastructure funding mechanism?
361.725 What happens if consensus on infrastructure funding is not reached at the local level between the Local Board, chief elected officials, and one-stop partners?
361.730 What is the State one-stop infrastructure funding mechanism?
361.735 How are partner contributions determined in the State one-stop funding mechanism?
361.740 What funds are used to pay for infrastructure costs in the State one-stop infrastructure funding mechanism?

361.745 How is the allocation formula used by the Governor determined in the State one-stop funding mechanism?
361.750 When and how can a one-stop partner appeal a one-stop infrastructure amount designated by the State under the State infrastructure funding mechanism?
361.755 What are the required elements regarding infrastructure funding that must be included in the one-stop Memorandum of Understanding?
361.760 How do one-stop partners jointly fund other shared costs under the Memorandum of Understanding?
361.800 How are one-stop centers and one-stop delivery systems certified for effectiveness, physical and programmatic accessibility, and continuous improvement?
361.900 What is the common identifier to be used by each one-stop delivery system?

Subpart F – Description of the One-Stop System Under Title I of the Workforce Innovation and Opportunity Act

§ 361.300 What is the one-stop delivery system?

(a) The one-stop delivery system brings together workforce development, educational, and other human resource services in a seamless customer-focused service delivery network that enhances access to the programs' services and improves long-term employment outcomes for individuals receiving assistance. One-stop partners administer separately funded programs as a set of integrated streamlined services to customers.

(b) Title I of the Workforce Innovation and Opportunity Act (WIOA) assigns responsibilities at the local, State, and Federal level to ensure the creation and maintenance of a one-stop delivery system that enhances the range and quality of education and workforce development services that business and individual customers can access.

(c) The system must include at least one comprehensive physical center in each local area as described in § 361.305.

(d) The system may also have additional arrangements to supplement the comprehensive center. These arrangements include:

(1) An affiliated site or a network of affiliated sites, where one or more partners make programs, services, and activities available, as described in § 361.310;

(2) A network of eligible one-stop partners, as described in §§ 361.400 through 361.410, through which each partner provides one or more of the programs, services, and activities that are linked, physically or technologically, to an affiliated site or access point that assures customers are provided information on the availability of career services, as well as other program services and activities, regardless of where they initially enter the workforce system in the local area; and

(3) Specialized centers that address specific needs, including those of dislocated workers, youth, or key industry sectors, or clusters.

(e) Required one-stop partner programs must provide access to programs, services, and activities through electronic means if applicable and practicable. This is in addition to providing access to services through the mandatory comprehensive physical one-stop center and any affiliated sites or specialized centers. The provision of programs and services by electronic methods such as Web sites, telephones, or other means must improve the efficiency, coordination, and quality of one-stop partner services. Electronic delivery must not replace access to such services at a comprehensive one-stop center or be a substitute to making services available at an affiliated site if the partner is participating in an affiliated site. Electronic delivery systems must be in compliance with the nondiscrimination and equal opportunity provisions of WIOA in sec. 188 and its implementing regulations at 29 CFR part 37.

(f) The design of the local area's one-stop delivery system must be described in the Memorandum of Understanding (MOU) executed with the one-stop partners, described in § 361.500.

§ 361.305 What is a comprehensive one-stop center and what must be provided there?

(a) A comprehensive one-stop center is a physical location where jobseeker and employer customers can access the programs, services, and activities of all required one-stop partners. A comprehensive one-stop center must have at least one title I staff person physically present.

(b) The comprehensive one-stop center must provide:

(1) Career services, described in § 361.430;

(2) Access to training services described in of this chapter;

(3) Access to any employment and training activities carried out under sec. 134(d) of WIOA;

(4) Access to programs and activities carried out by one-stop partners listed in §§ 361.400 through 361.410, including Wagner-Peyser employment services; and

(5) Workforce and labor market information.

(c) Customers must have access to these programs, services, and activities during regular business days at a comprehensive one-stop center. The Local Board may establish other service hours at other times to accommodate the schedules of individuals who work on regular business days. The State Board will evaluate the hours of access to service as part of the evaluation of effectiveness in the one-stop certification process described in § 361.800(b).

(d) "Access" to programs and services means having either: program staff physically present at the location; having partner program staff physically present at the one-stop appropriately trained to provide information to customers about the programs, services, and activities available through partner programs; or providing direct linkage through technology to program staff who can provide meaningful information or services.

(1) A "direct linkage" means providing direct connection at the one-stop, within a reasonable time, by phone or through a real-time Web-based communication to a program staff member who can provide program information or services to the customer.

(2) A "direct linkage" does not include providing a phone number or computer Web site that can be used at an individual's home; providing information, pamphlets, or materials; or making arrangements for the customer to receive services at a later time or on a different day.

(e) All comprehensive one-stop centers must be physically and programmatically accessible to individuals with disabilities, as described in § 361.800.

§ 361.310 What is an affiliated site and what must be provided there?

(a) An affiliated site, or affiliate one-stop center, is a site that makes available to jobseeker and employer customers one or more of the one-stop partners' programs, services, and activities. An affiliated site does not need to provide access to every required one-stop partner program. The frequency of program staff's physical presence in the affiliated site will be determined at the local level. Affiliated sites are access points in addition to the Comprehensive one-stop center(s) in each local area. If used by local areas as a part of the service delivery strategy, affiliate sites should be implemented in a manner that supplements and enhances customer access to services.

(b) As described in § 361.315, Wagner-Peyser employment services cannot be a stand-alone affiliated site.

(c) States, in conjunction with the Local Workforce Development Boards, must examine lease agreements and property holdings throughout the one-stop delivery system in order to use property in an efficient and effective way. Where necessary and appropriate, States and Local Boards must take expeditious steps to align lease expiration dates with efforts to consolidate one-stop operations into service points where Wagner-Peyser employment services are collocated as soon as reasonably possible. These steps must be included in the State Plan.

(d) All affiliated sites must be physically and programmatically accessible to individuals with disabilities, as described in § 361.800.

<u>§ 361.315 Can a stand-alone Wagner-Peyser employment service office be designated as an affiliated one-stop site</u>?

(a) Separate stand-alone Wagner-Peyser employment services offices are not permitted under WIOA, as also described in.

(b) If Wagner-Peyser employment services are provided at an affiliated site, there must be at least one other partner in the affiliated site with staff physically present more than 50 percent of the time the center is open. Additionally, the other partner must not be the partner administering local veterans' employment representatives, disabled veterans' outreach program specialists, or unemployment compensation programs. If Wagner-Peyser employment services and any of these three programs are provided at an affiliated site, an additional partner must have staff present in the center more than 50 percent of the time the center is open.

§ 361.320 Are there any requirements for networks of eligible one-stop partners or specialized centers?

Any network of one-stop partners or specialized centers must be connected to, such as having processes in place to make referrals to, the comprehensive and any appropriate affiliate one-stop centers. Wagner-Peyser employment services cannot stand alone in a specialized center. Just as described in § 361.315 for an affiliated site, a specialized center must include other programs besides Wagner-Peyser employment services, local veterans' employment representatives, disabled veterans' outreach program specialists, and unemployment compensation.

§ 361.400 Who are the required one-stop partners?

(a) Section 121(b)(1)(B) of WIOA identifies the entities that are required partners in the local one-stop systems.

(b) The required partners are the entities responsible for administering the following programs and activities in the local area:

(1) Programs authorized under title I of WIOA, including:

(i) Adults;

(ii) Dislocated workers;

(iii) Youth;

(iv) Job Corps;

(v) YouthBuild;

(vi) Native American programs; and

(vii) Migrant and seasonal farmworker programs;

(2) Employment services authorized under the Wagner-Peyser Act (29 U.S.C. 49 et seq.);

(3) Adult education and literacy activities authorized under title II of WIOA;

(4) The Vocational Rehabilitation program authorized under title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 et seq.);

(5) The Senior Community Service Employment Program authorized under title V of the Older Americans Act of 1965 (42 U.S.C. 3056 et seq.);

(6) Career and technical education programs at the post-secondary level authorized under the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 et seq.);

(7) Trade Adjustment Assistance activities authorized under chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2271 et seq.);

(8) Jobs for Veterans State Grants programs authorized under chapter 41 of title 38, U.S.C.;

(9) Employment and training activities carried out under the Community Services Block Grant (42 U.S.C. 9901 et seq.);

(10) Employment and training activities carried out by the Department of Housing and Urban Development;

(11) Programs authorized under State unemployment compensation laws (in accordance with applicable Federal law);

(12) Programs authorized under sec. 212 of the Second Chance Act of 2007 (42 U.S.C. 17532); and

(13) Temporary Assistance for Needy Families (TANF) authorized under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), unless exempted by the Governor under § 361.405(b).

§ 361.405 Is Temporary Assistance for Needy Families a required one-stop partner?

(a) Yes, TANF, authorized under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), is a required partner. (WIOA sec. 121(b)(1)(B)(xiii)).

(b) The Governor may determine that TANF will not be a required partner in the State, or within some specific local areas in the State. In this instance, the Governor must notify the Secretaries of the U.S. Departments of Labor and Health and Human Services in writing of this determination.

(c) In States, or local areas within a State, where the Governor has determined that TANF is not required to be a partner, local TANF programs may still opt to be a one-stop partner, or to work in collaboration with the one-stop center.

§ 361.410 What other entities may serve as one-stop partners?

(a) 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 Board and chief elected official(s) approve the entity's participation.

(b) Additional partners may include:

(1) Employment and training programs administered by the Social Security Administration, including the Ticket to Work and Self-Sufficiency Program established under sec. 1148 of the Social Security Act (42 U.S.C. 1320b-19);

(2) Employment and training programs carried out by the Small Business Administration;

(3) Supplemental Nutrition Assistance Program (SNAP) employment and training programs, authorized under secs. 6(d)(4) and 6(o) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(d)(4));

(4) Client Assistance Program authorized under sec. 112 of the Rehabilitation Act of 1973 (29 U.S.C. 732);

(5) Programs authorized under the National and Community Service Act of 1990 (42 U.S.C. 12501 et seq.); and

(6) Other appropriate Federal, State or local programs, including employment, education, and training programs provided by public libraries or in the private sector.

§ 361.415 What entity serves as the one-stop partner for a particular program in the local area?

(a) The entity that carries out the program and activities listed in § 361.400 or § 361.405, and therefore serves as the one-stop partner, is the grant recipient, administrative entity, or organization responsible for administering the funds of the specified program in the local area. The term "entity" does not include the service providers that contract with, or are subrecipients of, the local administrative entity. For programs that do not include local administrative entities, the responsible State agency should be the partner. Specific entities for particular programs are identified in paragraph (b) of this section. If a program or activity listed in § 361.400 is not carried out in a local area, the requirements relating to a required one-stop partner are not applicable to such program or activity in that local one-stop system.

(b) For title II of WIOA, the entity that carries out the program for the purposes of paragraph (a) of this section is the sole entity or agency in the State or outlying area responsible for administering or supervising policy for adult education and literacy activities in the State or outlying area. The State eligible entity may delegate its responsibilities under paragraph (a) of this section to one or more eligible providers or consortium of eligible providers.

(c) For the Vocational Rehabilitation program, authorized under title I of the Rehabilitation Act, the entity that carries out the program for the purposes of paragraph (a) of this section is the designated State agencies or designated State units specified under sec. 101(a)(2) of the Rehabilitation Act that is primarily concerned with vocational rehabilitation, or vocational and other rehabilitation, of individuals with disabilities.

(d) Under WIOA, the national programs, including Job Corps, the Native American program, YouthBuild, and Migrant and Seasonal Farmworker programs are required one-stop partners. The entity for the Native American program and Migrant and Seasonal Farmworker programs is the grantee of those respective programs. The entity for Job Corps is the Job Corps center.

(e) For the Carl D. Perkins Career and Technical Education Act of 2006, the entity that carries out the program for the purposes of paragraph (a) of this section is the State eligible agency. The State eligible agency may delegate its responsibilities under paragraph (a) of this section to one or more State agencies, eligible recipients at the post-secondary level, or consortia of eligible recipients at the post-secondary level.

§ 361.420 What are the roles and responsibilities of the required one-stop partners?

Each required partner must:

(a) Provide access to its programs or activities through the one-stop delivery system, in addition to any other appropriate locations; (WIOA sec. 121(b)(1)(A)(i).)

(b) Use a portion of funds made available to the partner's program, to the extent consistent with the Federal law authorizing the partner's program and with Federal cost principles in 2 CFR parts 200 and 3474 (requiring, among other things, that costs are allowable, reasonable, necessary, and allocable), to:

(1) Provide applicable career services; and

(2) Work collaboratively with the State and Local Boards to establish and maintain the one-stop delivery system. This includes jointly funding the one-stop infrastructure through partner contributions that are based upon:

(i) A reasonable cost allocation methodology by which infrastructure costs are charged to each partner in proportion to the relative benefits;

(ii) Federal cost principles; and

(iii) Any local administrative cost requirements in the Federal law authorizing the partner’s program. (This is further described in § 361.700). (WIOA sec. 121(b)(1)(A)(ii).)

(c) Enter into an MOU with the Local Board relating to the operation of the one-stop system that meets the requirements of § 361.500(d);

(d) Participate in the operation of the one-stop system consistent with the terms of the MOU, requirements of authorizing laws, the Federal cost principles, and all other applicable legal requirements; (WIOA sec. 121(b)(1)(A)(iv)) and

(e) Provide representation on the State and Local Workforce Development Boards as required and participate in Board committees as needed. (WIOA secs. 101(b)(iii) and 107(b)(2)(C) and (D))

§ 361.425 What are the applicable career services that must be provided through the one-stop delivery system by required one-stop partners?

(a) The applicable career services to be delivered by required one-stop partners are those services listed in § 361.430 that are authorized to be provided under each partner's program.

(b) One-stop centers provide services to individual customers based on individual needs, including the seamless delivery of multiple services to individual customers. There is no required sequence of services. (WIOA sec. 121(e)(1)(A).)

§ 361.430 What are career services?

Career services, as identified in sec. 134(c)(2) of WIOA, consist of three types:

(a) Basic career services must be made available and, at a minimum, must include the following services, as consistent with allowable program activities and Federal cost principles:

(1) Determinations of whether the individual is eligible to receive assistance from the adult, dislocated worker, or youth programs;

(2) Outreach, intake (including worker profiling), and orientation to information and other services available through the one-stop delivery system;

(3) Initial assessment of skill levels including literacy, numeracy, and English language proficiency, as well as aptitudes, abilities (including skills gaps), and supportive services needs;

(4) Labor exchange services, including—

(i) Job search and placement assistance, and, when needed by an individual, career counseling, including—

(A) Provision of information on in-demand industry sectors and occupations (as defined in sec. 3(23) of WIOA); and,

(B) Provision of information on nontraditional employment; and

(ii) Appropriate recruitment and other business services on behalf of employers, including information and referrals to specialized business services other than those traditionally offered through the one-stop delivery system;

(5) Provision of referrals to and coordination of activities with other programs and services, including programs and services within the one-stop delivery system and, when appropriate, other workforce development programs;

(6) Provision of workforce and labor market employment statistics information, including the provision of accurate information relating to local, regional, and national labor market areas, including—

(i) Job vacancy listings in labor market areas;

(ii) Information on job skills necessary to obtain the vacant jobs listed; and

(iii) Information relating to local occupations in demand and the earnings, skill requirements, and opportunities for advancement for those jobs;

(7) Provision of performance information and program cost information on eligible providers of training services by program and type of providers;

(8) Provision of information, in usable and understandable formats and languages, about how the local area is performing on local performance accountability

measures, as well as any additional performance information relating to the area's one-stop delivery system;

(9) Provision of information, in usable and understandable formats and languages, relating to the availability of supportive services or assistance, and appropriate referrals to those services and assistance, including: child care; child support; medical or child health assistance available through the State's Medicaid program and Children's Health Insurance Program; benefits under SNAP; assistance through the earned income tax credit; and assistance under a State program for Temporary Assistance for Needy Families, and other supportive services and transportation provided through that program;

(10) Provision of information and assistance regarding filing claims for unemployment compensation, by which the one-stop must provide meaningful assistance to individuals seeking assistance in filing a claim for unemployment compensation.

(i) "Meaningful assistance" means:

(A) Providing assistance on-site using staff who are well-trained in unemployment compensation claims filing and the rights and responsibilities of claimants, or

(B) Providing assistance by phone or via other technology, as long as the assistance is provided by trained and available staff and within a reasonable time.

(ii) The costs associated in providing this assistance may be paid for by the State's unemployment insurance program, or the WIOA adult or dislocated worker programs, or some combination thereof.

(11) Assistance in establishing eligibility for programs of financial aid assistance for training and education programs not provided under WIOA.

(b) Individualized career services must be made available if determined to be appropriate in order for an individual to obtain or retain employment. These services include the following services, as consistent with program requirements and Federal cost principles:

(1) Comprehensive and specialized assessments of the skill levels and service needs of adults and dislocated workers, which may include—

(i) Diagnostic testing and use of other assessment tools; and

(ii) In-depth interviewing and evaluation to identify employment barriers and appropriate employment goals;

(2) Development of an individual employment plan, to identify the employment goals, appropriate achievement objectives, and appropriate combination of services for the participant to achieve his or her employment goals, including the list of, and information about, the eligible training providers (as described in);

(3) Group counseling;

(4) Individual counseling;

(5) Career planning;

(6) Short-term pre-vocational services including development of learning skills, communication skills, interviewing skills, punctuality, personal maintenance skills, and professional conduct services to prepare individuals for unsubsidized employment or training;

(7) Internships and work experiences that are linked to careers (as described in);

(8) Workforce preparation activities;

(9) Financial literacy services as described in sec. 129(b)(2)(D) of WIOA and § 681.500 of this chapter;

(10) Out-of-area job search assistance and relocation assistance; and

(11) English language acquisition and integrated education and training programs.

(c) Follow-up services must be provided, as appropriate, including: counseling regarding the workplace, for participants in adult or dislocated worker workforce investment activities who are placed in unsubsidized employment, for up to 12 months after the first day of employment.

§ 361.435 What are the business services provided through the one-stop delivery system, and how are they provided?

(a) Certain career services must be made available to local businesses, specifically labor exchange activities and labor market information described in § 361.430(a)(4)(ii) and (a)(6). Local areas must establish and develop relationships and networks with large and small employers and their intermediaries. (WIOA sec. 134(c)(1)(A)(iv)). Local areas also must develop, convene, or implement industry or sector partnerships. (WIOA sec. 134(c)(1)(A)(v)).

(b) Customized business services may be provided to employers, employer associations, or other such organizations (WIOA sec. 134(d)(1)(A)(ii)). These services are tailored for specific employers and may include:

(1) Customized screening and referral of qualified participants in training services to employers;

(2) Customized services to employers, employer associations, or other such organizations, on employment-related issues;

(3) Customized recruitment events and related services for employers including targeted job fairs;

(4) Human resource consultation services, including but not limited to assistance with:

(i) Writing/reviewing job descriptions and employee handbooks;

(ii) Developing performance evaluation and personnel policies;

(iii) Creating orientation sessions for new workers;

(iv) Honing job interview techniques for efficiency and compliance;

(v) Analyzing employee turnover; or

(vi) Explaining labor laws to help employers comply with wage/hour and safety/health regulations;

(5) Customized labor market information for specific employers, sectors, industries or clusters; and

(6) Other similar customized services.

(c) Local areas may also provide other business services and strategies that meet the workforce investment needs of area employers, in accordance with partner programs' statutory requirements and consistent with Federal cost principles. These business services may be provided through effective business intermediaries working in conjunction with the Local Board, or through the use of economic development, philanthropic, and other public and private resources in a manner determined appropriate

by the Local Board and in cooperation with the State. Allowable activities, consistent with each partner's authorized activities, include, but are not limited to:

(1) Developing and implementing industry sector strategies (including strategies involving industry partnerships, regional skills alliances, industry skill panels, and sectoral skills partnerships);

(2) Customized assistance or referral for assistance in the development of a registered apprenticeship program;

(3) Developing and delivering innovative workforce investment services and strategies for area employers, which may include career pathways, skills upgrading, skill standard development and certification for recognized post-secondary credential or other employer use, and other effective initiatives for meeting the workforce investment needs of area employers and workers;

(4) Assistance to area employers in managing reductions in force in coordination with rapid response activities and with strategies for the aversion of layoffs, which may include strategies such as early identification of firms at risk of layoffs, use of feasibility studies to assess the needs of and options for at-risk firms, and the delivery of employment and training activities to address risk factors;

(5) The marketing of business services to appropriate area employers, including small and mid-sized employers; and

(6) Assisting employers with accessing local, State, and Federal tax credits.

(d) All business services and strategies must be reflected in the local plan, described in § 679.560(b)(3) of this chapter.

§ 361.440 When may a fee be charged for the business services in this subpart?

(a) There is no requirement that a fee-for-service be charged to employers.

(b) No fee may be charged for services provided in § 361.435(a).

(c) A fee may be charged for services provided under § 361.435(b) and (c). Services provided under § 361.435(c) may be provided through effective business intermediaries working in conjunction with the Local Board and may also be provided on a fee-for-service basis or through the leveraging of economic development, philanthropic, and other public and private resources in a manner determined appropriate by the Local Board. The Local Workforce Development Board may examine the services provided compared with the assets and resources available within the local one-stop delivery system and through its partners to determine an appropriate cost structure for services, if any.

§ 361.500 What is the Memorandum of Understanding for the one-stop delivery system and what must be included in the Memorandum of Understanding ?

(a) The MOU is the product of local discussion and negotiation, and is an agreement developed and executed between the Local Board, with the agreement of the chief elected official and the one-stop partners, relating to the operation of the one-stop delivery system in the local area. Two or more local areas in a region may develop a single joint MOU, if they are in a region that has submitted a regional plan under sec. 106 of WIOA.

(b) The MOU must include:

(1) A description of services to be provided through the one-stop delivery system, including the manner in which the services will be coordinated and delivered through the system;

(2) A final plan, or an interim plan if needed, on how the costs of the services and the operating costs of the system will be funded, including:

(i) Funding of infrastructure costs of one-stop centers in accordance with §§ 361.700 through 361.755; and

(ii) Funding of the shared services and operating costs of the one-stop delivery system described in § 361.760;

(3) Methods for referring individuals between the one-stop operators and partners for appropriate services and activities;

(4) Methods to ensure that the needs of workers, youth, and individuals with barriers to employment, including individuals with disabilities, are addressed in providing access to services, including access to technology and materials that are available through the one-stop delivery system;

(5) The duration of the MOU and procedures for amending it; and

(6) Assurances that each MOU will be reviewed, and if substantial changes have occurred, renewed, not less than once every 3-year period to ensure appropriate funding and delivery of services.

(c) The MOU may contain any other provisions agreed to by the parties that are consistent with WIOA title I, the authorizing statutes and regulations of one-stop partner programs, and the WIOA regulations. (WIOA sec. 121(c).)

(d) When fully executed, the MOU must contain the signatures of the Local Board, one-stop partners, the chief elected official(s), and the time period in which the agreement is effective. The MOU must be updated not less than every 3 years to reflect any changes in the signatory official of the Board, one-stop partners, and chief elected officials, or one-stop infrastructure funding.

(e) If a one-stop partner appeal to the State regarding infrastructure costs, using the process described in § 361.750, results in a change to the one-stop partner's infrastructure cost contributions, the MOU must be updated to reflect the final one-stop partner infrastructure cost contributions.

§ 361.505 Is there a single Memorandum of Understanding for the local area, or must there be separate Memoranda of Understanding between the Local Board and each partner?

(a) A single "umbrella" MOU may be developed that addresses the issues relating to the local one-stop delivery system for the Local Board, chief elected official and all partners. Alternatively, the Local Board (with agreement of chief elected official) may enter into separate agreements between each partner or groups of partners.

(b) Under either approach, the requirements described in § 361.500 apply. Since funds are generally appropriated annually, the Local Board may negotiate financial agreements with each partner annually to update funding of services and operating costs of the system under the MOU.

§ 361.510 How should the Memorandum of Understanding be negotiated?

(a) WIOA emphasizes full and effective partnerships between Local Boards, chief elected officials, and one-stop partners. Local Boards and partners must enter into

good-faith negotiations. Local Boards, chief elected officials, and one-stop partners may also request assistance from a State agency responsible for administering the partner program, the Governor, State Board, or other appropriate parties on other aspects of the MOU.

(b) Local Boards and one-stop partners must establish, in the MOU, a final plan for how the Local Board and programs will fund the infrastructure costs of the one-stop centers. If a final plan regarding infrastructure costs is not complete when other sections of the MOU are ready, an interim infrastructure cost plan may be included instead, as described in § 361.715(c). Once the final infrastructure cost plan is approved, the Local Board and one-stop partners must amend the MOU to include the final plan for funding infrastructure costs of the one-stop centers, including a description of the funding mechanism established by the Governor relevant to the local area. Infrastructure cost funding is described in detail in subpart E of this part. (WIOA sec. 121(h)(2).)

(c) The Local Board must report to the State Board, Governor, and relevant State agency when MOU negotiations with one-stop partners have reached an impasse.

(1) The Local Board and partners must document the negotiations and efforts that have taken place in the MOU. The State Board, one-stop partner programs, and the Governor may consult with the appropriate Federal agencies to address impasse situations related to issues other than infrastructure funding after attempting to address the impasse. Impasses related to infrastructure cost funding must be resolved using the State infrastructure cost funding mechanism described in § 361.730.

(2) The Local Board must report failure to execute an MOU with a required partner to the Governor, State Board, and the State agency responsible for administering

the partner's program. Additionally, if the State cannot assist the Local Board in resolving the impasse, the Governor or the State Board must report the failure to the Secretary of Labor and to the head of any other Federal agency with responsibility for oversight of a partner's program.

§ 361.600 Who may operate one-stop centers?

(a) One-stop operators may be a single entity (public, private, or nonprofit) or a consortium of entities. If the consortium of entities is one of one-stop partners, it must include a minimum of three of the one-stop partners described in § 361.400.

(b) The one-stop operator may operate one or more one-stop centers. There may be more than one one-stop operator in a local area.

(c) The types of entities that may be a one-stop operator include:

(1) An institution of higher education;

(2) An Employment Service State agency established under the Wagner-Peyser Act;

(3) A community-based organization, nonprofit organization, or workforce intermediary;

(4) A private for-profit entity;

(5) A government agency;

(6) A Local Board, with the approval of the chief local elected official and the Governor; or

(7) Another interested organization or entity, which is capable of carrying out the duties of the one-stop operator. Examples may include a local chamber of commerce or other business organization, or a labor organization.

(d) Elementary schools and secondary schools are not eligible as one-stop operators, except that a nontraditional public secondary school such as a night school, adult school, or an area career and technical education school may be selected.

(e) The State and Local Boards must ensure that, in carrying out WIOA programs and activities, one-stop operators:

(1) Disclose any potential conflicts of interest arising from the relationships of the operators with particular training service providers or other service providers (further discussed in);

(2) Do not establish practices that create disincentives to providing services to individuals with barriers to employment who may require longer-term career and training services; and

(3) Comply with Federal regulations and procurement policies relating to the calculation and use of profits, including those at, the Uniform Guidance at 2 CFR chapter II, and other applicable regulations and policies.

§ 361.605 How is the one-stop operator selected?

(a) Consistent with paragraphs (b) and (c) of this section, the Local Board must select the one-stop operator through a competitive process, as required by sec. 121(d)(2)(A) of WIOA, at least once every 4 years. A State may require, or a Local Board may choose to implement, a competitive selection process more than once every 4 years.

(b) In instances in which a State is conducting the competitive process described in paragraph (a) of this section, the State must follow the same policies and procedures it uses for procurement with non-Federal funds.

(c) All other non-Federal entities, including subrecipients of a State (such as local areas), must use a competitive process based on the principles of competitive procurement in the Uniform Administrative Guidance set out at 2 CFR 200.318 through 200.326.

(d) Entities described in paragraph (c) of this section must first determine the nature of the process to be used to comply with sec. 121(d)(2)(A) of WIOA. The acceptable processes are:

(1) Procurement by sealed bids;

(2) Procurement by competitive proposals; or

(3) Procurement by sole source, permitted only if:

(i) Analysis of market conditions and other factors lead to a determination that it is necessary to use sole-source procurement because:

(A) There is only one entity that could serve as an operator; or

(B) Unusual and compelling urgency will not permit a delay resulting from competitive solicitation; or

(ii) Results of the competition conducted under paragraphs (d)(1) or (2) of this section were determined to be inadequate.

(e) Entities must prepare written documentation explaining the determination concerning the nature of the competitive process to be followed in selecting a one-stop operator.

<u>§ 361.610 How is sole source selection of one-stop operators accomplished</u>?

(a) As set forth in § 361.605(d)(3), under certain conditions, sole source procurement is an allowable method of procurement.

(b) In the event that sole source procurement is determined necessary and reasonable, in accordance with § 361.605(d)(3) of this section, written documentation must be prepared and maintained concerning the entire process of making such a selection.

(c) Such sole source procurement must include appropriate conflict of interest policies and procedures. These policies and procedures must conform to the specifications in for demonstrating internal controls and preventing conflict of interest.

(d) A Local Board can be selected as a one-stop operator through sole source procurement only with agreement of the chief elected official in the local area and the Governor. The Local Board must establish sufficient conflict of interest policies and procedures and they must be approved by the Governor.

<u>§ 361.615 Can an entity serving as one-stop operator compete to be a one-stop operator under the procurement requirements of this subpart?</u>

(a) Local Boards can compete for and be selected as one-stop operators, as long as appropriate firewalls and conflict of interest policies and procedures are in place. These policies and procedures must conform to the specifications in for demonstrating internal controls and preventing conflict of interest.

(b) State and local agencies can compete for and be selected as one-stop operators by the Local Board, as long as appropriate firewalls and conflict of interest policies and procedures are in place. These policies and procedures must conform to the specifications in for demonstrating internal controls and preventing conflict of interest.

(c) In the case of single State areas where the State Board serves as the Local Board, the State agency is eligible to compete for and be selected as operator as long as

appropriate firewalls and conflict of interest policies are in place and followed for the competition. These policies and procedures must conform to the specifications in for demonstrating internal controls and preventing conflict of interest.

§ 361.620 What is the one-stop operator's role?

(a) At a minimum, the one-stop operator must coordinate the service delivery of required one-stop partners and service providers. Local Boards may establish additional roles of one-stop operator, including, but not limited to: coordinating service providers within the center and across the one-stop system, being the primary provider of services within the center, providing some of the services within the center, or coordinating service delivery in a multi-center area. The competition for a one-stop operator must clearly articulate the role of the one-stop operator.

(b) A one-stop operator may not perform the following functions: convene system stakeholders to assist in the development of the local plan; prepare and submit local plans (as required under sec. 107 of WIOA); be responsible for oversight of itself; manage or significantly participate in the competitive selection process for one-stop operators; select or terminate one-stop operators, career services, and youth providers; negotiate local performance accountability measures; and develop and submit budget for activities of the Local Board in the local area. An entity serving as a one-stop operator may perform some or all of these functions if it also serves in another capacity, if it has established sufficient firewalls and conflict of interest policies. The policies must conform to the specifications in for demonstrating internal controls and preventing conflict of interest.

§ 361.625 Can a one-stop operator also be a service provider?

Yes, but there must be appropriate firewalls in place in regards to the competition, and subsequent oversight, monitoring, and evaluation of performance of the service provider. The operator cannot develop, manage or conduct the competition of a service provider in which it intends to compete. In cases where an operator is also a service provider, there must be firewalls and internal controls within the operator-service provider entity, as well as specific policies and procedures at the Local Board level regarding oversight, monitoring, and evaluation of performance of the service provider. The firewalls must conform to the specifications in for demonstrating internal controls and preventing conflict of interest.

§ 361.630 Can State merit staff still work in a one-stop where the operator is not a governmental entity?

Yes. State merit staff can continue to perform functions and activities in the one-stop career center. The Local Board and one-stop operator must establish a system for management of merit staff in accordance with State policies and procedures. Continued use of State merit staff may be included in the competition for and final contract with the one-stop operator.

§ 361.635 What is the effective date of the provisions of this subpart?

(a) No later than June 30, 2017, one-stop operators selected under the competitive process described in this subpart must be in place and operating the one-stop.

(b) By June 30, 2016, every Local Board must demonstrate it is taking steps to prepare for competition of its one-stop operator. This demonstration may include, but is

not limited to, market research, requests for information, and conducting a cost and price analysis.

§ 361.700 What are one-stop infrastructure costs?

(a) Infrastructure costs of one-stop centers are nonpersonnel costs that are necessary for the general operation of the one-stop center, including:

(1) Rental of the facilities;

(2) Utilities and maintenance;

(3) Equipment (including assessment-related products and assistive technology for individuals with disabilities); and

(4) Technology to facilitate access to the one-stop center, including technology used for the center's planning and outreach activities.

(b) Local Boards may consider common identifier costs as costs of one-stop infrastructure.

(c) Each entity that carries out a program or activities in a local one-stop center, described in §§ 361.400 through 361.410, must use a portion of the funds available for the program and activities to maintain the one-stop delivery system, including payment of the infrastructure costs of one-stop centers. These payments must be in accordance with this subpart; Federal cost principles, which require that all costs must be allowable, reasonable, necessary, and allocable to the program; and all other applicable legal requirements.

§ 361.705 What guidance must the Governor issue regarding one-stop infrastructure funding?

(a) The Governor, after consultation with chief elected officials, the State Board, and Local Boards, and consistent with guidance and policies provided by the State Board, must develop and issue guidance for use by local areas, specifically:

(1) Guidelines for State-administered one-stop partner programs for determining such programs' contributions to a one-stop delivery system, based on such programs' proportionate use of such system consistent with Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, including determining funding for the costs of infrastructure; and

(2) Guidance to assist Local Boards, chief elected officials, and one-stop partners in local areas in determining equitable and stable methods of funding the costs of infrastructure at one-stop centers based on proportionate benefits received, and consistent with Federal cost principles.

(b) The guidance must include:

(1) The appropriate roles of the one-stop partner programs in identifying one-stop infrastructure costs;

(2) Approaches to facilitate equitable and efficient cost allocation that results in a reasonable cost allocation methodology where infrastructure costs are charged to each partner in proportion to relative benefits received, consistent with Federal cost principles; and

(3) The timelines regarding notification to the Governor for not reaching local agreement and triggering the State-funded infrastructure mechanism described in § 361.730, and timelines for a one-stop partner to submit an appeal in the State-funded infrastructure mechanism.

§ 361.710 How are infrastructure costs funded?

Infrastructure costs are funded either through the local funding mechanism described in § 361.715 or through the State funding mechanism described in § 361.730.

§ 361.715 How are one-stop infrastructure costs funded in the local funding mechanism?

(a) In the local funding mechanism, the Local Board, chief elected officials, and one-stop partners agree to amounts and methods of calculating amounts each partner will contribute for one-stop infrastructure funding, include the infrastructure funding terms in the MOU, and sign the MOU. The local one-stop funding mechanism must meet all of the following requirements:

(1) The infrastructure costs are funded through cash and fairly evaluated in-kind partner contributions and include any funding from philanthropic organizations or other private entities, or through other alternative financing options, to provide a stable and equitable funding stream for ongoing one-stop delivery system operations;

(2) Contributions must be negotiated between one-stop partners, chief elected officials, and the Local Board and the amount to be contributed must be included in the MOU;

(3) The one-stop partner program's proportionate share of funding must be calculated in accordance with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200 based upon a reasonable

cost allocation methodology whereby infrastructure costs are charged to each partner in proportion to relative benefits received, and must be allowable, reasonable, necessary, and allocable;

(4) Partner shares must be periodically reviewed and reconciled against actual costs incurred, and adjusted to ensure that actual costs charged to any one-stop partners are proportionate and equitable to the benefit received by the one-stop partners and their respective programs or activities.

(b) In developing the section of the MOU on one-stop infrastructure funding fully described in § 361.755, the Local Board and chief elected officials will:

(1) Ensure that the one-stop partners adhere to the guidance identified in § 361.705 on one-stop delivery system infrastructure costs.

(2) Work with one-stop partners to achieve consensus and informally mediate any possible conflicts or disagreements among one-stop partners.

(3) Provide technical assistance to new one-stop partners and local grant recipients to ensure that those entities are informed and knowledgeable of the elements contained in the MOU and the one-stop infrastructure costs arrangement.

(c) The MOU may include an interim infrastructure funding agreement, including as much detail as the Local Board has negotiated with one-stop partners, if all other parts of the MOU have been negotiated, in order to allow the partner programs to operate in the one-stop centers. The interim infrastructure agreement must be finalized within 6 months of when the MOU is signed. If the infrastructure interim infrastructure agreement is not finalized within that timeframe, the Local Board must notify the Governor, as described in § 361.725.

§ 361.720 What funds are used to pay for infrastructure costs in the local one-stop infrastructure funding mechanism?

(a) In the local one-stop infrastructure funding mechanism, one-stop partner programs can determine what funds they will use to fund infrastructure costs. The use of these funds must be in accordance with the requirements in this subpart, and with the relevant partner's authorizing statutes and regulations, including, for example, prohibitions against supplanting non-Federal resources, statutory limitations on administrative costs, and all other applicable legal requirements. In the case of partners administering adult education and literacy programs authorized by title II of WIOA or the Carl D. Perkins Career and Technical Education Act of 2006, these funds may include Federal funds that are available for State administration of adult education and literacy programs authorized by title II of WIOA or for State administration of post-secondary level programs and activities under the Perkins Act, and non-Federal funds that the partners contribute to meet these programs' matching or maintenance of effort requirements. These funds also may include local administrative funds available to local entities or consortia of local entities that have been delegated authority to serve as one-stop local partners by a State eligible agency as permitted by § 361.415(b) and (e).

(b) There are no specific caps on the amount or percent of overall funding a one-stop partner may contribute to fund infrastructure costs under the local one-stop funding mechanism, except that contributions for administrative costs may not exceed the amount available for administrative costs under the authorizing statute of the partner program. However, amounts contributed for infrastructure costs must be allowable and based on proportionate use by or benefit to the partner program, taking into account the total cost

of the one-stop infrastructure as well as alternate financing options, and must be consistent with 2 CFR chapter II, including the Federal cost principles.

§ 361.725 What happens if consensus on infrastructure funding is not reached at the local level between the Local Board, chief elected officials, and one-stop partners?

If, after July 1, 2016, and each subsequent July 1, the Local Board, chief elected officials, and one-stop partners do not reach consensus on methods of sufficiently funding local infrastructure through the local infrastructure cost funding mechanism, and include that consensus agreement in the signed MOU, then the Local Board must notify the Governor and the Governor must administer funding through the State one-stop funding mechanism, as described in § 361.730. (WIOA sec. 121(h)(2))

§ 361.730 What is the State one-stop infrastructure funding mechanism?

(a) In the State one-stop infrastructure funding mechanism, the Governor, after consultation with the chief elected officials, Local Boards, and the State Board, determines one-stop partner contributions, based upon a methodology where infrastructure costs are charged to each partner in proportion to relative benefits received and consistent with the partner program's authorizing laws and regulations, 2 CFR chapter II, including the Federal cost principles, and other applicable legal requirements described in § 361.735(a).

(b) The State Board develops an allocation formula to allocate funds to local areas to support the infrastructure costs for local area one-stop centers for all local areas that did not use the local funding mechanism, and the Governor uses that formula to allocate the funds. This is described in detail in § 361.745.

§ 361.735 How are partner contributions determined in the State one-stop funding mechanism?

(a) In the State one-stop funding mechanism, the Governor, after consultation with State and Local Boards and chief elected officials, will determine the amount each partner must contribute to assist in paying the infrastructure costs of one-stop centers. The Governor must calculate amounts based on the proportionate use of the one-stop centers by each partner, consistent with chapter II of title 2, Code of Federal Regulations (or any corresponding similar regulation or ruling), taking into account the costs of administration of the one-stop delivery system for purposes not related to one-stop centers for each partner such as costs associated with maintaining the Local Board, or information technology systems. The Governor will also take into account the statutory requirements for each partner program, all other applicable legal requirements, and the partner program's ability to fulfill such requirements.

(b) In certain situations, the Governor does not determine the infrastructure cost contributions for one-stop partner programs.

(1) The Governor will not determine the contribution amounts for infrastructure funds for Native American grantees described in. (WIOA sec. 121(h)(2)(D)(iii).) The appropriate portion of funds to be provided by Native American grantees to pay for one-stop infrastructure must be determined as part of the development of the MOU described in § 361.500 and specified in that MOU.

(2) In a State in which the State constitution or a State statute places policy-making authority that is independent of the authority of the Governor in an entity or official with respect to the funds provided for adult education and literacy activities, post-

secondary career and technical education activities, or vocational rehabilitation services, the chief officer of that entity or the official must determine the contribution amounts for infrastructure funds in consultation with the Governor. (WIOA sec. 121(h)(2)(C)(ii).)

(c) Limitations. Per WIOA sec. 122(h)(2)(D), the amount established by the Governor under paragraph (a) of this section may not exceed the following caps:

(1) WIOA formula programs and employment service. The portion of funds required to be contributed under the WIOA youth, adult, or dislocated worker programs, or under the Wagner- Peyser Act (29 U.S.C. 49 et seq.) must not exceed 3 percent of the amount of Federal funds provided to carry out that program in the State for a program year.

(2) Other one-stop partners. The portion of funds required to be contributed must not exceed 1.5 percent of the amount of Federal funds provided to carry out that education program or employment and training program in the State for a fiscal year. For purposes of Carl D. Perkins Career and Technical Education Act of 2006, the cap on contributions is determined based on the funds made available for State administration of post-secondary level programs and activities.

(3) Vocational rehabilitation. Within a State, the entity or entities administering the programs described in WIOA sec. 121(b)(1)(B)(iv) the allotment is based on the one State allotment, even in instances where that allotment is shared between two State agencies, and will not be required to provide from that program a cumulative portion that exceeds—

(i) 0.75 percent of the amount of Federal funds provided to carry out such program in the State for Fiscal Year 2016;

(ii) 1.0 percent of the amount provided to carry out such program in the State for Fiscal Year 2017;

(iii) 1.25 percent of the amount provided to carry out such program in the State for Fiscal Year 2018; and

(iv) 1.5 percent of the amount provided to carry out such program in the State for Fiscal Year 2019 and following years.

(4) Federal direct spending programs. For local areas that have not reached a one-stop infrastructure funding agreement by consensus, an entity administering a program funded with direct spending as defined in sec. 250(c)(8) of the Balanced Budget and Emergency Deficit Control Act of 1985, as in effect on February 15, 2014 (2 U.S.C. 900(c)(8)), must not be required to provide more for infrastructure costs than the amount that the Governor determined (as described in § 361.735(a)).

(d) If the above limitations result in funding less than each partner's proportionate share and contribute to inadequate funding of the allocation amount determined under § 361.745(b), the Governor may direct the Local Board, chief elected officials, and one-stop partners to reenter negotiations to reduce the infrastructure costs to reflect the amount of funds that are available for such costs, discuss proportionate share of each one-stop partner, or to identify alternative sources of financing for one-stop infrastructure funding, but, in any event, a partner will only be required to pay an amount that is consistent with the proportionate benefit received by the partner, the program's authorizing laws and regulations, the Federal cost principles, and other applicable legal requirements.

(1) The Local Board, chief elected officials, and one-stop partners, after renegotiation, may come to agreement and sign an MOU and proceed under the local one-stop funding mechanism.

(2) If after renegotiation, agreement amongst partners still cannot be reached or alternate financing identified, the Governor may adjust the specified allocation, in accordance with the amounts available and the limitations described in § 361.735(c).

§ 361.740 What funds are used to pay for infrastructure costs in the State one-stop infrastructure funding mechanism?

(a) In the State one-stop infrastructure funding mechanism, infrastructure costs for WIOA title I programs, including Native American Programs described in, can be paid using program funds, administrative funds, or both. Infrastructure costs for the Senior Community Service Employment Program under title V of the Older Americans Act (42 U.S.C. 3056 et seq.) can also be paid using program funds, administrative funds, or both. (WIOA sec. 121(h)(2)(D)(i)(II).)

(b) In the State one-stop infrastructure funding mechanism, infrastructure costs for other required one-stop partner programs (listed in §§ 361.400 through 361.410) are limited to the program's administrative funds, as appropriate. (WIOA sec. 121(h)(2)(D)(i)(I).)

(c) In the State one-stop infrastructure funding mechanism, infrastructure costs for the adult education program authorized by title II of WIOA must be paid from the funds that are available for State administration or from non-Federal funds that the partner contributes to meet the program's matching or maintenance of effort requirement. Infrastructure costs for title II of WIOA may also be paid from funds available for local

administration of programs and activities to eligible providers or consortia of eligible providers delegated responsibilities to act as a local one-stop partner pursuant to § 361.415(b).

(d) In the State one-stop infrastructure funding mechanism, infrastructure costs for the Carl D. Perkins Career and Technical Education Act of 2006 must be paid from the Federal funds that are available for State administration of post-secondary level programs and activities under the Perkins Act, or from non-Federal funds that the partner contributes to meet the program's matching or maintenance of effort requirement. Infrastructure costs for the Carl D. Perkins Career and Technical Education Act of 2006 may also be paid from funds available for local administration of post-secondary level programs and activities to eligible recipients or consortia of eligible recipients delegated responsibilities to act as a local one-stop partner pursuant to § 361.415(e).

§ 361.745 How is the allocation formula used by the Governor determined in the State one-stop funding mechanism?

(a) The State Board must develop an allocation formula to be used by the Governor to allocate funds to the local areas that did not successfully use the local funding mechanism. The allocation formula must take into account the number of one-stop centers in a local area, the population served by such centers, the services provided by such centers, and other factors relating to the performance of such centers that the State Board determines are appropriate and that are consistent with Federal cost principles. (WIOA 121(h)(3)(B))

(b) Using the funds contributed by the one-stop partners described in § 361.735, the Governor will then use this formula to allocate funds to the local areas that did not

use the local funding mechanism to fund one-stop center infrastructure costs, so long as that funding distribution is consistent with Federal cost principles for each of the affected one-stop partners.

§ 361.750 When and how can a one-stop partner appeal a one-stop infrastructure amount designated by the State under the State infrastructure funding mechanism?

(a) The Governor must establish a process, described under sec. 121(h)(2)(E) of WIOA, for a one-stop partner administering a program described in §§ 361.400 through 361.410 to appeal the Governor's determination regarding the one-stop partner's portion of funds to be provided for one-stop infrastructure costs. This appeal process must be described in the Unified State Plan. (WIOA secs. 121(h)(2)(E) and 102(b)(2)(D)(i)(IV).)

(b) The appeal may be made on the ground that the Governor's determination is inconsistent with proportionate share requirements in § 361.735(a), the cost contribution limitations in § 361.735(b), or the cost contribution caps in § 361.735(c).

(c) The process must ensure prompt resolution of the appeal in order to ensure the funds are distributed in a timely manner, consistent with the requirements of.

(d) The one-stop partner must submit an appeal in accordance with State's deadlines for appeals specified in the guidance issued under § 361.705(b)(3), or if the State has not set a deadline, within 21 days from the Governor's determination.

§ 361.755 What are the required elements regarding infrastructure funding that must be included in the one-stop Memorandum of Understanding?

The MOU, fully described in § 361.500, must contain the following information whether the local areas use either the local one-stop or the State one-stop infrastructure funding method:

(a) The period of time in which this infrastructure funding agreement is effective. This may be a different time period than the duration of the MOU.

(b) Identification of an infrastructure and shared services budget that will be periodically reconciled against actual costs incurred and adjusted accordingly to ensure that it reflects a cost allocation methodology that demonstrates how infrastructure costs are charged to each partner in proportion to relative benefits received, and that complies with chapter II of title 2 of the Code of Federal Regulations (or any corresponding similar regulation or ruling).

(c) Identification of all one-stop partners, chief elected officials, and Local Board participating in the infrastructure funding arrangement.

(d) Steps the Local Board, chief elected officials, and one-stop partners used to reach consensus or an assurance that the local area followed the guidance for the State one-stop infrastructure funding process.

(e) Description of the process to be used between partners to resolve issues during the MOU duration period when consensus cannot be reached.

(f) Description of the periodic modification and review process to ensure equitable benefit among one-stop partners.

<u>§ 361.760 How do one-stop partners jointly fund other shared costs under the Memorandum of Understanding</u>?

(a) In addition to jointly funding infrastructure costs, one-stop partners listed in §§ 361.400 through 361.410 must use a portion of funds made available under their programs' authorizing Federal law (or fairly evaluated in-kind contributions) to pay the

additional costs relating to the operation of the one-stop delivery system, which must include applicable career services.

(b) Additionally, one-stop partners may jointly fund shared services to the extent consistent with their programs' Federal authorizing statutes and other applicable legal requirements. Shared services' costs may include the costs of shared services that are authorized for and may be commonly provided through the one-stop partner programs to any individual, such as initial intake, assessment of needs, appraisal of basic skills, identification of appropriate services to meet such needs, referrals to other one-stop partners, and business services. Shared operating costs may also include shared costs of the Local Board's functions.

(c) These shared costs must be allocated according to the proportion of benefit received by each of the partners, consistent with the Federal law authorizing the partner's program, and consistent with all other applicable legal requirements, including Federal cost principles in chapter II of title 2 of the Code of Federal Regulations (or any corresponding similar regulation or ruling) requiring that costs are reasonable, necessary, and allocable.

(d) Any shared costs agreed upon by the one-stop partners must be included in the MOU.

<u>§ 361.800 How are one-stop centers and one-stop delivery systems certified for effectiveness, physical and programmatic accessibility, and continuous improvement</u>?

(a) The State Board, in consultation with chief elected officials and Local Boards, must establish objective criteria and procedures for Local Boards to use when certifying one-stop centers.

(1) The State Board must review and update the criteria every 2 years as part of the review and modification of State Plans pursuant to § 361.135.

(2) The criteria must be consistent with the Governor's and State Board's guidelines, guidance and policies on infrastructure funding decisions, described in § 361.705. The criteria must evaluate the one-stop centers and one-stop delivery system for effectiveness, including customer satisfaction, physical and programmatic accessibility, and continuous improvement.

(3) When the Local Board is the one-stop operator as described in, the State Board must certify the one-stop center.

(b) Evaluations of effectiveness must include how well the one-stop center integrates available services for participants and businesses, meets the workforce development needs of participants and the employment needs of local employers, operates in a cost-efficient manner, coordinates services among the one-stop partner programs, and provides maximum access to partner program services even outside regular business hours. These evaluations must take into account feedback from one-stop customers. They must also include evaluations of how well the one-stop center ensures equal opportunity for individuals with disabilities to participate in or benefit from one-stop center services. These evaluations must include criteria evaluating how well the centers and delivery systems take actions to comply with the disability-related regulations implementing WIOA sec. 188, set forth at 29 CFR part 37. Such actions include, but are not limited to:

(1) Providing reasonable accommodations for individuals with disabilities;

(2) Making reasonable modifications to policies, practices, and procedures where necessary to avoid discrimination against persons with disabilities;

(3) Administering programs in the most integrated setting appropriate;

(4) Communicating with persons with disabilities as effectively as with others; and

(5) Providing appropriate auxiliary aids and services, including assistive technology devices and services, where necessary to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, the program or activity.

(c) Evaluations of continuous improvement must include how well the one-stop center supports the achievement of the negotiated local levels of performance for the indicators of performance for the local area described in sec. 116(b)(2) of WIOA and. Other continuous improvement factors may include a regular process for identifying and responding to technical assistance needs, a regular system of continuing professional staff development, and having systems in place to capture and respond to specific customer feedback.

(d) Local Boards must assess at least once every 3 years the effectiveness, physical and programmatic accessibility, and continuous improvement of one-stop centers and the one-stop delivery systems using the criteria and procedures developed by the State Board. The Local Board may establish additional criteria, or set higher standards for service coordination, than those set by the State criteria. Local Boards must review and update the criteria every 2 years as part of the Local Plan update process described in § 361.580. Local Boards must certify one-stop centers in order to be eligible

to receive infrastructure funds in the State infrastructure funding mechanism described in § 361.730.

(e) All one-stop centers must comply with applicable physical accessibility requirements, as set forth.

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

(a) The common one-stop delivery system identifier is "American Job Center."

(b) As of July 1, 2016, each one-stop delivery system must include the "American Job Center" identifier or "a proud partner of the American Job Center network" on all products, programs, activities, services, facilities, and related property and materials used in the one-stop system.

(c) One-stop partners, States or local areas may use additional identifiers on their products, programs, activities, services, facilities, and related property and materials.

PART 463 – ADULT EDUCATION AND FAMILY LITERACY ACT

8. The authority citation for part 463 continues to read as follows:

Authority: 29 U.S.C. 102 and 103, unless otherwise noted.

9. Add subpart H to part 463, as added elsewhere in this issue of the Federal Register, to read as follows:

Subpart H – Unified and Combined State Plans Under Title I of the Workforce Innovation and Opportunity Act

Sec.

463.100 What is the purpose of the Unified and Combined State Plans?
463.105 What are the general requirements for the Unified State Plan?
463.110 What are the program-specific requirements in the Unified State Plan for the adult, dislocated worker, and youth workforce investment activities in Workforce Innovation and Opportunity Act title I?

463.115 What are the program-specific requirements in the Unified State Plan for the Adult Education and Family Literacy Act program in Workforce Innovation and Opportunity Act title II?
463.120 What are the program-specific requirements in the Unified State Plan for Wagner-Peyser Act Employment Service programs in title III of the Workforce Innovation and Opportunity Act?
463.125 What are the program-specific requirements in the Unified State Plan for the State Vocational Rehabilitation program in Workforce Innovation and Opportunity Act title IV?
463.130 What is the submission and approval process of the Unified State Plan?
463.135 What are the requirements for modification of the Unified State Plan?
463.140 What are the general requirements for submitting a Combined State Plan?
463.143 What is the submission and approval process of the Combined State Plan?
463.145 What are the requirements for modifications of the Combined State Plan?

Subpart H – Unified and Combined State Plans Under Title I of the Workforce Innovation and Opportunity Act

§ 463.100 What is the purpose of the Unified and Combined State Plans?

(a) The Unified and Combined State Plans provide the framework for States to outline a strategic vision of, and goals for, how their workforce development systems will achieve the purposes of Workforce Innovation and Opportunity Act (WIOA).

(b) The Unified and Combined State Plans serve as 4-year action plans to develop, align, and integrate the State's systems and provide a platform to achieve the State's vision and strategic and operational goals. A Unified or Combined State Plan is intended to:

(1) Align, in strategic coordination, the six core programs required in the Unified State Plan pursuant to § 463.105(b), and additional optional programs that may be part of the Combined State Plan pursuant to § 463.140;

(2) Direct investments in economic, education, and workforce training programs to focus on providing relevant education and training to ensure that individuals, including

youth and individuals with barriers to employment, have the skills to compete in the job market and that employers have a ready supply of skilled workers;

(3) Apply strategies for job-driven training consistently across Federal programs, and;

(4) Enable economic, education, and workforce partners to build a skilled workforce through innovation in, and alignment of, employment, training, and education programs.

§ 463.105 What are the general requirements for the Unified State Plan?

(a) The Unified State Plan must be submitted in accordance with § 463.130 and joint planning guidelines issued by the Secretary of Labor and the Secretary of Education.

(b) The Governor of each State must submit, in accordance with § 463.130, a Unified or Combined State Plan to the Secretary of Labor to be eligible to receive funding for the workforce development system's six core programs:

(1) The adult, dislocated worker, and youth programs authorized under subtitle B of title I of WIOA and administered by the U.S. Department of Labor;

(2) The Adult Education and Family Literacy Act (AEFLA) program authorized under title II of WIOA and administered by the U.S. Department of Education;

(3) The Wagner-Peyser Act Employment Services programs amended by title III of WIOA and administered by the U.S. Department of Labor; and

(4) The State Vocational Rehabilitation program amended by title IV of WIOA and administered by the U.S. Department of Education.

(c) The Unified State Plan must outline the State's 4-year strategy for the core programs described in paragraph (b) of this section and meet the requirements of sec.

102(b) of WIOA, as explained in the joint planning guidance issued by the Secretary of Labor and the Secretary of Education.

(d) The Unified State Plan must include strategic and operational planning elements to facilitate the development of an aligned, coordinated, and comprehensive workforce development system. The Unified State Plan must include:

(1) Strategic planning elements that describe the State's strategic vision and goals for preparing an educated and skilled workforce under sec. 102(b)(1) of WIOA. The strategic planning elements must be informed by and include an analysis of the State's economic conditions and employer and workforce needs, including education and skill needs.

(2) Strategies for aligning the core programs and optional programs, as well as other resources available to the State, to achieve the strategic vision and goals in accordance with sec. 102(b)(1)(E) of WIOA.

(3) Operational planning elements in accordance with sec. 102(b)(2) of WIOA that support the strategies for aligning the core programs and other resources available to the State to achieve the State's vision and goals and a description of how the State Workforce Development Board will implement its functions, in accordance with sec. 101(d) of WIOA. Operational planning elements must include:

(i) A description of how the State strategy will be implemented by each core program's lead State agency;

(ii) State operating systems, including data systems, and policies that will support the implementation of the State's strategy identified in paragraph (d)(1) of this section;

(iii) Program-specific requirements for the core programs required by WIOA sec. 102(b)(2)(D);

(iv) Assurances required by sec. 102(b)(2)(E) of WIOA and others deemed necessary by the Secretaries of Labor and Education under sec. 102(b)(2)(E)(x) of WIOA; and

(v) Any additional operational planning requirements imposed by the Secretary of Labor or the Secretary of Education under sec. 102(b)(2)(C)(viii) of WIOA.

§ 463.110 What are the program-specific requirements in the Unified State Plan for the adult, dislocated worker, and youth workforce investment activities in Workforce Innovation and Opportunity Act title I?

The program-specific requirements for the adult, dislocated worker, and youth workforce investment activities that must be included in the Unified State Plan are described in sec. 102(b)(2)(D) of WIOA. Additional planning requirements may be required by the Secretary of Labor or the Secretary of Education in accordance with joint planning guidelines issued by the Secretary of Labor and the Secretary of Education.

§ 463.115 What are the program-specific requirements in the Unified State Plan for the Adult Education and Family Literacy Act program in Workforce Innovation and Opportunity Act title II?

The program-specific requirements for the AEFLA program in title II that must be included in the Unified State Plan are described in secs. 102(b)(2)(D)(ii) and 102(b)(2)(C) of WIOA.

(a) With regard to the description required in sec. 102(b)(2)(D)(ii)(I) of WIOA pertaining to content standards, the Unified State Plan must describe how the eligible

agency will, by July 1, 2016, align its content standards for adult education with State-adopted challenging academic content standards under the Elementary and Secondary Education Act of 1965, as amended.

(b) With regard to the description required in sec. 102(b)(2)(C)(iv) of WIOA pertaining to the methods and factors the State will use to distribute funds under the core programs, for title II of WIOA, the Unified State Plan must include -

(1) How the eligible agency will award multi-year grants on a competitive basis to eligible providers in the State; and

(2) How the eligible agency will provide direct and equitable access to funds using the same grant or contract announcement and application procedure.

(c) With regard to the description required under sec. 102(b)(2)(C)(v)(I) of WIOA pertaining to the integration of workforce and education data on core programs, unemployment insurance programs, and education through post-secondary education, for title II of WIOA, the Unified State Plan must include how the State will ensure interoperability of data systems in the reporting on core indicators of performance and performance reports required to be submitted by the State.

<u>§ 463.120 What are the program-specific requirements in the Unified State Plan for Wagner-Peyser Act Employment Service programs in title III of the Workforce Innovation and Opportunity Act</u>?

Wagner-Peyser Act Employment Services programs amended by title III are subject to requirements in sec. 102(b) of WIOA and any additional requirements imposed by the Secretary of Labor under sec. 102(b)(2)(C)(viii) of WIOA, in accordance with joint planning guidelines issued by the Secretary of Labor and the Secretary of Education.

§ 463.125 What are the program-specific requirements in the Unified State Plan for the State Vocational Rehabilitation program in Workforce Innovation and Opportunity Act title IV?

The program specific requirements for the vocational rehabilitation services portion of the Unified or Combined State Plan are set forth in sec. 101(a) of the Rehabilitation Act of 1973, as amended. All submission requirements of the Vocational Rehabilitation Services portion of the Unified or Combined State Plan are in addition to the jointly developed strategic and operational content requirements prescribed by secs. 102(b) and 103 of WIOA.

§ 463.130 What is the submission and approval process of the Unified State Plan?

(a) The Unified State Plan described in § 463.105 must be submitted in accordance with planning guidelines issued jointly by the Secretaries of Labor and Education which explain the submission and approval process in WIOA sec. 102(c).

(b) A State must submit its Unified State Plan to the Secretary of Labor pursuant to a process identified by the Secretary.

(1) The initial Unified State Plan must be submitted no later than 120 days prior to the commencement of the second full program year of WIOA.

(2) The subsequent Unified State Plan must be submitted no later than 120 days prior to the end of the 4-year period described in paragraph (b)(1) of this section.

(3) For purposes of paragraph (b) of this section, “program year” means July 1 through June 30 of any year.

(c) The State must provide an opportunity for public comment on and input into the development of the Unified State Plan prior to its submission.

(1) The opportunity for public comment must include an opportunity for comment by representatives of Local Boards and chief elected officials, businesses, representatives of labor organizations, community-based organizations, adult education providers, institutions of higher education, other stakeholders with an interest in the services provided by the six core programs, and the general public, including individuals with disabilities.

(2) Consistent with the "Sunshine Provision" of WIOA in sec. 101(g), the State Board must make information regarding the Unified State Plan available to the public through electronic means and regularly occurring open meetings in accordance with State law. The Unified State Plan must describe the State's process and timeline for ensuring a meaningful opportunity for public comment.

(d) Upon receipt of the Unified State Plan from the State, the Secretary of Labor will ensure that the entire Unified State Plan is submitted to the Secretary of Education pursuant to a process developed by the Secretaries.

(e) The Unified State Plan is subject to the approval of both the Secretary of Labor and the Secretary of Education.

(f) Before the Secretary of Labor and the Secretary of Education approve the Unified State Plan, the vocational rehabilitation portion of the Unified State Plan described in WIOA sec. 102(b)(2)(D)(iii) must be approved by the Commissioner of the Rehabilitation Services Administration.

(g) The Secretary of Labor and the Secretary of Education will review and approve the Unified State Plan within 90 days of receipt by the appropriate Secretary,

unless the Secretary of Labor or the Secretary of Education determines in writing within that period that:

(1) The plan is inconsistent with a core program's requirements;

(2) The Unified State Plan is inconsistent with any requirement of sec. 102 of WIOA; or

(3) The plan is incomplete or otherwise insufficient to determine whether it is consistent with a core program's requirements or other requirements of WIOA.

(h) If neither the Secretary of Labor nor the Secretary of Education makes the written determination described in paragraph (g) of this section within 90 days of the receipt by the Secretaries, the Unified State Plan will be considered approved.

§ 463.135 What are the requirements for modification of the Unified State Plan?

(a) In addition to the required modification review set forth in paragraph (b) of this section, a Governor may submit a modification of its Unified State Plan at any time during the 4-year period of the plan.

(b) Modifications are required, at a minimum:

(1) At the end of the first 2-year period of any 4-year State Plan, wherein the State Board must review the Unified State Plan, and the Governor must submit modifications to the plan to reflect changes in labor market and economic conditions or other factors affecting the implementation of the Unified State Plan;

(2) When changes in Federal or State law or policy substantially affect the strategies, goals, and priorities upon which the Unified State Plan is based;

(3) When there are changes in the statewide vision, strategies, policies, State adjusted levels of performance, the methodology used to determine local allocation of

funds, reorganizations which change the working relationship with system employees, changes in organizational responsibilities, changes to the membership structure of the State Board or alternative entity, and similar substantial changes to the State's workforce investment system.

(c) Modifications to the Unified State Plan are subject to the same public review and comment requirements in § 463.130(c) that apply to the development of the original Unified State Plan.

(d) Unified State Plan modifications must be approved by the Secretary of Labor and the Secretary of Education, based on the approval standards applicable to the original Unified State Plan under § 463.130. This approval must come after the approval of the Commissioner of the Rehabilitation Services Administration for modification of any portion of the plan described in sec. 102(b)(2)(D)(iii) of WIOA.

§ 463.140 What are the general requirements for submitting a Combined State Plan?

(a) A State may choose to develop and submit a 4-year Combined State Plan in lieu of the Unified State Plan described in § 463.105.

(b) A State that submits a Combined State Plan covering an activity or program described in paragraph (d) of this section that is approved under WIOA sec. 103(c) or determined complete under the law relating to the program will not be required to submit any other plan or application in order to receive Federal funds to carry out the core programs or the program or activities described under paragraph (d) of this section that are covered by the Combined State Plan.

(c) If a State develops a Combined State Plan, it must be submitted in accordance with the process described in § 463.143.

(d) If a State chooses to submit a Combined State Plan, the Plan must include the six core programs and one or more of the optional programs and activities described in sec. 103(a)(2) of WIOA. The optional programs and activities that may be included in the Combined State Plan are:

(1) Career and technical education programs authorized under the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 et seq.);

(2) Temporary Assistance for Needy Families or TANF, authorized under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.);

(3) Employment and training programs authorized under sec. 6(d)(4) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(d)(4));

(4) Work programs authorized under sec. 6(o) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(o));

(5) Trade adjustment assistance activities under chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2271 et seq.);

(6) Services for veterans authorized under chapter 41 of title 38, United States Code;

(7) Programs authorized under State unemployment compensation laws (in accordance with applicable Federal law);

(8) Senior Community Service Employment Programs under title V of the Older Americans Act of 1956 (42 U.S.C. 3056 et seq.);

(9) Employment and training activities carried out by the Department of Housing and Urban Development;

(10) Employment and training activities carried out under the Community Services Block Grant Act (42 U.S.C. 9901 et seq.); and

(11) Reintegration of offenders programs authorized under sec. 212 of the Second Chance Act of 2007 (42 U.S.C. 17532).

(e) A Combined State Plan must contain:

(1) For the core programs, the information required by sec. 102(b) of WIOA and § 463.105, as explained in the joint planning guidance issued by the Secretaries;

(2) For the optional programs, except as described in paragraph (h) of this section, the information required by the law authorizing and governing that program to be submitted to the appropriate Secretary, any other applicable legal requirements, and any common planning requirements described in sec. 102(b) of WIOA, as explained in the joint planning guidance issued by the Secretaries;

(3) A description of joint planning methods across all programs included in the Combined State Plan; and

(4) An assurance that all of the entities responsible for planning or administering the programs described in the Combined State Plan have had a meaningful opportunity to review and comment on all portions of the Plan.

(f) Each optional program included in the Combined State Plan remains subject to the applicable program-specific requirements of the Federal law and regulations, and any other applicable legal or program requirements, governing the implementation and operation of that program.

(g) For purposes of §§ 463.140 through 463.145 the term "appropriate Secretary" means the head of the Federal agency who exercises either plan or application approval

authority for the program or activity under the Federal law authorizing the program or activity or, if there are no planning or application requirements, who exercises administrative authority over the program or activity under that Federal law.

(h) States that include employment and training activities carried out under the Community Services Block Grant (CSBG) Act (42 U.S.C. 9901 et seq.) under a Combined State Plan would submit all other required elements of a complete CSBG State Plan directly to the Federal agency that administers the program, according to the requirements of Federal law and regulations.

§ 463.143 What is the submission and approval process of the Combined State Plan?

(a) For purposes of § 463.140(a), if a State chooses to develop a Combined State Plan it must submit the Combined State Plan in accordance with the requirements described below and the joint planning guidelines, which will further explain the submission and approval procedures for the Combined State Plan, issued by the Secretaries.

(b) The State must submit to the Secretaries of Labor and Education and to the Secretary of the agency with responsibility for approving the program's plan or determining it complete under the law governing the program, as part of its Combined State Plan, any plan, application, form, or any other similar document that is required as a condition for the approval of Federal funding under the applicable program or activity. Such submission must occur in accordance with a process identified by the relevant Secretaries in paragraph (a) of this section.

(c) The Combined State Plan will be approved or disapproved in accordance with the requirements of sec. 103(c) of WIOA.

(1) The portion of the Combined State Plan covering programs administered by the Departments of Labor and Education must be reviewed, and approved or disapproved, by the appropriate Secretary within 90 days beginning on the day the plan is received by the appropriate Secretary from the State, except as provided in paragraph (d) of this section.

(2) If an appropriate Secretary other than the Secretary of Labor or the Secretary of Education has authority to approve or determine complete a portion of the Combined State Plan for a program or activity described in § 463.140(d), that portion of the plan must be reviewed, and approved, disapproved, or have a determination of completeness, by the appropriate Secretary within 120 days beginning on the day the plan is received by the appropriate Secretary from the State except as provided in paragraph (e) of this section.

(d) The review and determination of approval or disapproval, or determination of completeness, of the relevant portion of the Combined State Plan must occur within 90 days for all Department of Labor and Education programs included in the State Plan and within 120 days for the programs administered by other Federal Agencies unless the appropriate Secretary determines in writing within that period that:

(1) The Plan is inconsistent with the requirements of the six core programs or the Federal laws authorizing or applicable to the program or activity involved, including the criteria for approval of a plan or application, or determining the plan's completeness, if any, under such law;

(2) The portion of the Plan describing the six core programs or the program or activity described in paragraph (a) of this section involved does not satisfy the criteria as provided in sec. 102 or 103 of WIOA, as applicable; or

(3) The Plan is incomplete, or otherwise insufficient to determine whether it is consistent with a core program's requirements, other requirements of WIOA, or the Federal laws authorizing, or applicable to, the program or activity described in § 463.140(d), including the criteria for approval of a plan or application, if any, under such law.

(e) If the Secretary of Labor, the Secretary of Education, or the appropriate Secretary does not make the written determination described in paragraph (d) of this section within the relevant period of time after submission of the Plan, that portion of the Combined State Plan over which the Secretary has jurisdiction will be considered approved.

(f) Special rule. In paragraphs (d)(1) and (3) of this section, the term "criteria for approval of a plan or application," with respect to a State or a core program or a program under the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 et seq.), includes a requirement for agreement between the State and the appropriate Secretaries regarding State performance measures or State performance accountability measures, as the case may be, including levels of performance.

§ 463.145 What are the requirements for modifications of the Combined State Plan?

(a) For the core program portions of the Combined State Plan, modifications are required at the end of the first 2-year period of any 4-year Combined State Plan. The State Board must review the Combined State Plan, and the Governor must submit a

modification of the Combined State Plan to reflect changes in labor market and economic conditions or in other factors affecting the implementation of the Combined State Plan.

(b) In addition to the required modification review described in paragraph (a) of this section, a State may submit a modification of its Combined State Plan at any time during the 4-year period of the plan.

(c) For any programs and activities described in § 463.140(d) that are included in a State's Combined State Plan, the State –

(1) May decide if the modification requirements under WIOA sec. 102(c)(3) that apply to the core programs will apply to the optional programs or activities described in § 463.140(d) that are included in the Combined State Plan or may comply with the procedures and requirements applicable to only the particular optional program or activity; and

(2) Must submit, in accordance with the procedure described in § 463.143, any other modification, amendment, or revision required by the Federal law authorizing, or applicable to, the program or activity described in § 463.140(d). If the underlying programmatic requirements change for Federal laws authorizing such programs, a State must either modify its Combined State Plan or submit a separate plan to the appropriate Federal agency in accordance with the new Federal law authorizing the optional program or activity and other legal requirements applicable to such program or activity. A State also may amend its Combined State Plan to add an optional program or activity described in § 463.140(d).

(d) Modifications of the Combined State Plan are subject to the same public review and comment requirements that apply to the development of the original

Combined State Plan as described in § 463.130(c) except that, if the modification, amendment, or revision affects the administration of a particular optional program and has no impact on the Combined State Plan as a whole or the integration and administration of the core and optional programs at the State level, a State may comply instead with the procedures and requirements applicable to the particular optional program.

(e) Modifications for the core program portions of the Combined State Plan must be approved by the Secretary of Labor and the Secretary of Education, based on the approval standards applicable to the original Combined State Plan under § 463.143. This approval must come after the approval of the Commissioner of the Rehabilitation Services Administration for modification of any portion of the Combined State Plan described in sec. 102(b)(2)(D)(iii) of WIOA.

(f) Modifications for the portions of the Combined State Plan for any optional program or activity described in § 463.140(d) must be submitted for approval by only the appropriate Secretary, based on the approval standards applicable to the original Combined State Plan under § 463.143, if the State elects, or in accordance with the procedures and requirements applicable to the particular optional program if the modification, amendment, or revision affects the administration of only that particular optional program and has no impact on the Combined State Plan as a whole or the integration and administration of the core and optional programs at the State level.

10. Add subpart I to part 463, as added elsewhere in this issue of the Federal Register, to read as follows:

Subpart I – Performance Accountability Under Title I of the Workforce Innovation and Opportunity Act

Sec.

463.150 What definitions apply to Workforce Innovation and Opportunity Act performance measurement and reporting requirements?

463.155 What are the primary indicators of performance under the Workforce Innovation and Opportunity Act?

463.160 What information is required for State performance reports?

463.165 May a State require additional indicators of performance?

463.170 How are State adjusted levels of performance for primary indicators established?

463.175 What responsibility do States have to use quarterly wage record information for performance accountability?

463.180 What State actions are subject to a financial sanction under Workforce Innovation and Opportunity Act?

463.185 When are sanctions applied for failure to report?

463.190 When are sanctions applied for failure to achieve adjusted levels of performance?

463.195 What should States expect when a sanction is applied to the Governor's Reserve Allotment?

463.200 What other administrative actions will be applied to States' performance requirements?

463.205 What performance indicators apply to local areas?

463.210 How are local performance levels established?

463.215 Under what circumstances are local areas eligible for State Incentive Grants?

463.220 Under what circumstances may a corrective action or sanction be applied to local areas for poor performance?

463.225 Under what circumstances may local areas appeal a reorganization plan?

463.230 What information is required for the eligible training provider performance reports?

463.235 What are the reporting requirements for individual records for core Workforce Innovation and Opportunity Act title I, III, and IV programs?

463.240 What are the requirements for data validation of State annual performance reports?

Subpart I – Performance Accountability Under Title I of the Workforce Innovation and Opportunity Act

§ 463.150 What definitions apply to Workforce Innovation and Opportunity Act performance measurement and reporting requirements?

(a) Participant. A reportable individual who has received staff-assisted services after satisfying all applicable programmatic requirements for the provision of services, such as eligibility determination.

(1) For the Vocational Rehabilitation (VR) program, a Participant is an individual who has an approved and signed Individualized Plan for Employment (IPE) and has begun to receive services.

(2) The following individuals are not Participants:

(i) Individuals who have not completed at least 12 contact hours in the Adult Education and Family Literacy Act (AEFLA) program;

(ii) Individuals who only use the self-service system; and

(iii) Individuals who only receive information services or activities.

(3) Programs must include participants in their performance calculations.

(b) Reportable individual. An individual who has taken action that demonstrates an intent to use program services and who meets specific reporting criteria of the core program, including:

(1) Individuals who provide identifying information;

(2) Individuals who only use the self-service system; and

(3) Individuals who only receive information on services or activities.

(c) Exit. As defined for the purpose of performance calculations, exit is the point after which an individual who has received services through any program meets the following criteria:

(1) For the adult, dislocated worker, and youth programs under Workforce Innovation and Opportunity Act (WIOA) title I, the AEFLA program under WIOA title II, and the Employment Services authorized by the Wagner-Peyser Act as amended by WIOA title III, exit date is the last date of service:

(i) The exit date cannot be determined until 90 days of no services has elapsed. At that point the exit date is applied retroactively to the last date of service.

(A) Ninety days of no service does not include self-service or information-only activities or follow-up services and

(B) There are no future services planned, excluding follow-up services.

(ii) [Reserved]

(2)(i) For the VR program as amended by WIOA title IV:

(A) The participant's record of service is closed in accordance with §463.56 because the participant has achieved an employment outcome; or

(B) The participant's service record is closed because the individual has not achieved an employment outcome or the individual has been determined ineligible after receiving services in accordance with §463.43.

(ii) Notwithstanding any other provision of this section, a participant will not be considered as meeting the definition of exit from the Vocational Rehabilitation program if the individual's service record is closed because the individual has achieved a supported employment outcome in an integrated setting but not in competitive integrated employment.

<u>§ 463.155 What are the primary indicators of performance under the Workforce Innovation and Opportunity Act</u>?

(a) All States submitting either a Unified or Combined State Plan under §§ 463.130 and 676.143 of this chapter, must propose expected levels of performance for each of the primary indicators of performance for the adult, dislocated worker, and youth programs under title I of WIOA, the AEFLA program under title II of WIOA, the Wagner-Peyser Act as amended by title III of WIOA, and the VR program as amended by WIOA.

(1) The six primary indicators for performance are:

(i) The percentage of participants, who are in unsubsidized employment during the second quarter after exit from the program;

(ii) The percentage of participants, who are in unsubsidized employment during the fourth quarter after exit from the program;

(iii) Median earnings of participants, who are in unsubsidized employment during the second quarter after exit from the program;

(iv) The percentage of participants who obtained a recognized post-secondary credential or a secondary school diploma, or its recognized equivalent during participation in or within 1 year after exit from the program. A participant who has obtained a secondary school diploma or its recognized equivalent is only included in this measure if the participant is also employed or is enrolled in an education or training program leading to a recognized post-secondary credential within 1 year from program exit;

(v) The percentage of participants who during a program year, are in an education or training program that leads to a recognized post-secondary credential or employment and who are achieving measurable skill gains, defined as documented

academic, technical, occupational or other forms of progress, towards such a credential or employment.

(vi) Effectiveness in serving employers, based on indicators developed as required by sec. 116(b)(2)(A)(iv) of WIOA.

(2) [Reserved]

(b) The indicators in paragraphs (a)(1)(i) through (vi) of this section apply to the adult, dislocated worker, AEFLA and VR programs.

(c) The indicators in paragraphs (a)(1)(i) through (iii) and (vi) of this section apply to the Employment Services.

(d) For the youth program under title I of WIOA, the indicators are:

(1) Percentage of participants who are in education or training activities, or in unsubsidized employment, during the second quarter after exit from the program;

(2) Percentage of participants in education or training activities, or in unsubsidized employment, during the fourth quarter after exit from the program;

(3) Median earnings of participants who are in unsubsidized employment during the second quarter after exit from the program;

(4) The percentage of participants who obtained a recognized post-secondary credential or a secondary school diploma, or its recognized equivalent, during participation or up to 1 year after exit. A participant who has obtained a secondary school diploma or its recognized equivalent is only included in this measure if the participant is also employed or is enrolled in an education or training program leading to a recognized post-secondary credential within 1 year from program exit;

(5) The percentage of participants who during a program year, are in an education or training program that leads to a recognized post-secondary credential or employment and who are achieving measurable skill gains, defined as documented academic, technical, occupational or other forms of progress towards such a credential or employment;

(6) Effectiveness in serving employers, based on indicators developed as required by sec. 116(b)(2)(iv) of WIOA.

§ 463.160 What information is required for State performance reports?

(a) Section 116(d)(2) of WIOA requires States to submit a State performance report. The State performance report must be submitted annually using a template the Departments will disseminate and must provide, at a minimum, information on the actual performance levels achieved consistent with § 463.175 with respect to:

(1) The total number of participants served, and the total number of participants who exited each of the core programs identified in sec. 116(b)(3)(A)(ii) of WIOA, including disaggregated counts of those who participated in and exited a core program, by:

(i) Individuals with barriers to employment as defined in WIOA sec. 3(24); and

(ii) Co-enrollment in any of the programs in WIOA sec 116(b)(3)(A)(ii).

(2) Information on the performance levels achieved for the primary indicators for all of the core programs identified in § 463.155 including disaggregated levels for:

(i) Individuals with barriers to employment as defined in WIOA sec. 3(24);

(ii) Age;

(iii) Sex; and

(iv) Race and ethnicity.

(3) The total number of participants and exiters who received career and training services for the most recent program year and the three preceding program years, as applicable to the program;

(4) Information on the performance levels achieved for the primary indicators consistent with § 463.155 for career and training services for the most recent program year and the 3 preceding program years, as applicable to the program;

(5) The percentage of participants in a program who obtained unsubsidized employment related to the training received (often referred to as training-related employment) through WIOA title I-B programs;

(6) The amount of funds spent on each type of career and training service for the most recent program year and the 3 preceding program years, as applicable to the program;

(7) The average cost per participant for those participants who received career and training services, respectively, during the most recent program year and the 3 preceding program years for, as applicable to the program;

(8) The percentage of a State's annual allotment under WIOA sec. 132(b) that the State spent on administrative costs; and

(9) information that facilitates comparisons of programs with programs in other States.

(10) For WIOA title I programs, a State performance narrative, which, for States in which a local area is implementing a pay-for-performance contracting strategy, at a minimum provides:

(i) A description of pay-for-performance contract strategies being used for programs;

(ii) The performance of service providers entering into contracts for such strategies, measured against the levels of performance specified in the contracts for such strategies; and

(iii) An evaluation of the design of the programs and performance strategies and, when available, the satisfaction of employers and participants who received services under such strategies.

(b) The disaggregation of data for the State performance report must be done in compliance with WIOA sec. 116(d)(6)(C).

(c) The State performance reports must include a mechanism of electronic access to the State's local area and ETP performance reports.

(d) States must comply with these requirements from sec. 116 of WIOA as explained in joint guidance issued by the Departments of Education and Labor, which may include information on reportable individuals as determined by the Secretaries.

§ 463.165 May a State require additional indicators of performance?

States may identify additional indicators of performance for the six core programs. These indicators must be included in the Unified or Combined State Plan.

§ 463.170 How are State adjusted levels of performance for primary indicators established?

(a) A State must submit in the State Plan expected levels of performance on the primary indicators for each core program as required by sec. 116(b)(iv) of WIOA as explained in joint guidance issued by the Secretaries of Education and Labor.

(1) The initial State Plan submitted under WIOA must contain expected levels of performance for the first 2 years of the State Plan period.

(2) States must submit expected levels of performance for the third and fourth year of the State Plan before the third program year consistent with §§ 463.135 and 463.145.

(b) The State must reach agreement on levels of performance with the Secretaries of Education and Labor for each of the core programs based on the following factors:

(1) How the levels of performance compare with State adjusted levels of performance established for other States;

(2) The application of an objective statistical model established by the Secretaries of Education and Labor, subject to paragraph (d) of this section;

(3) How the levels promote continuous improvement in performance based on the primary indicators and ensure optimal return on investment of Federal funds; and

(4) The extent to which the levels assist the State in meeting the performance goals established by the Secretaries of Education and Labor for the core programs in accordance with the Government Performance and Results Act of 1993, and its amendments.

(c) An objective statistical adjustment model will be developed and disseminated by the Secretaries. The model will be based on:

(1) Differences among States in actual economic conditions, including unemployment rates and job losses or gains in particular industries; and

(2) The characteristics of participants, including:

(i) Indicators of poor work history;

(ii) Lack of work experience;

(iii) Lack of educational or occupational skills attainment;

(iv) Dislocation from high-wage and high-benefit employment;

(v) Low levels of literacy;

(vi) Low levels of English proficiency;

(vii) Disability status;

(viii) Homelessness;

(ix) Ex-offender status; and

(x) Welfare dependency.

(d) The objective statistical adjustment model developed under paragraph (c) of this section will be:

(1) Applied to the core programs' primary indicators upon availability of data which is necessary to populate the model and apply it to the programs;

(2) Subject to paragraph (d)(1) of this section, used before the beginning of a program year in order to establish State performance targets for the upcoming program year; and

(3) Subject to paragraph (d)(1) of this section, used to revise performance levels at the end of a program year based on actual circumstances, consistent with sec. 116(b)(3)(vii) of WIOA.

(e) States must comply with these requirements from sec. 116 of WIOA as explained in joint guidance issued by the Departments of Education and Labor.

§ 463.175 What responsibility do States have to use quarterly wage record information for performance accountability?

(a) States must, consistent with State laws, use quarterly wage record information in measuring the progress on State adjusted levels of performance for the primary indicators outlined in § 463.155 and local performance indicators identified in § 463.205. The use of social security numbers from participants and such other information as is necessary to measure the progress of those participants through quarterly wage record information is authorized.

(b) "Quarterly wage record information" means intrastate and interstate wages paid to an individual, the social security number (or numbers, if more than one) of the individual and the name, address, State, and the Federal employer identification number of the employer paying the wages to the individual.

(c) The Governor may designate a State agency [or appropriate State entity] to assist in carrying out the performance reporting requirements for WIOA core programs and eligible training providers. The Governor or such agency [or appropriate State entity] is responsible for:

(1) Facilitating data matches;

(2) Data quality reliability, protection against disaggregation that would violate privacy.

§ 463.180 What State actions are subject to a financial sanction under Workforce Innovation and Opportunity Act?

The following failures by a State are subject to financial sanction under WIOA sec. 116(d):

(a) The failure by a State to submit the State annual performance report required under WIOA sec. 116(d)(2); or

(b) The failure by a State to meet adjusted levels of performance for the primary indicators of performance in accordance with sec. 116(f) of WIOA.

§ 463.185 When are sanctions applied for failure to report?

(a) Sanctions will be applied when a State fails to submit the State annual performance reports required under sec. 116(d)(2) of WIOA. It is a failure to report if the State either:

(1) Does not submit a State annual performance report by the date for timely submission set in performance reporting guidance; or

(2) Submits a State annual performance report by the date for timely submission, but the report is incomplete.

(b) Sanctions will not be assessed if the reporting failure is due to exceptional circumstances outside of the State's control. Exceptional circumstances may include, but are not limited to:

(1) Natural disasters,

(2) Unexpected personnel transitions; and

(3) Unexpected technology related impacts.

(c) In the event that a State may not be able to submit a complete and accurate performance report by the deadline for timely reporting:

(1) The State must notify the Secretary of Labor or Secretary of Education as soon as possible of a potential impact on the ability to submit their State annual

performance reports by no later than 30 days prior to the established deadline in order to not be considered failing to report.

(2) In circumstances where unexpected events occur within the 30-day period before the deadline for submission of the State annual performance reports, the Secretary of Labor and Secretary of Education will review requests for extending the reporting deadline in accordance with the Departments' procedures explained in guidance on reporting timelines.

§ 463.190 When are sanctions applied for failure to achieve adjusted levels of performance?

(a) States' negotiated levels of performance will be adjusted through the application of the statistical adjustment model established under § 463.170 to account for actual conditions experienced during a program year and characteristics of participants, annually at the close of each program year.

(b) States that fail to meet adjusted levels of performance for the primary indicators of performance outlined in § 463.155 for any year will receive technical assistance, including assistance in the development of a performance improvement plan provided by the Secretary of Labor or Secretary of Education.

(c) State failure to meet adjusted levels of performance will be determined through three criteria:

(1) Overall State program scores, based on the percent achieved by a program on each of the six primary indicators compared to the adjusted goal for each primary indicator. The average of the percentage of the adjusted goal achieved for each primary indicator will constitute the overall program score for the State;

(2) Overall State indicator scores, based on the percent achieved by each program on each of the individual primary indicators compared to the adjusted goal. The average of the percentage of the adjusted goal achieved for each of the six core programs' will constitute an overall indicator score for the State; and

(3) Individual indicator scores, based on the percent achieved by each program on each of the individual primary indicators compared to the adjusted goals.

(d) A performance failure occurs when:

(1) Any overall State program score or overall State indicator score falls below 90 percent for the program year; or

(2) Any of the States' individual indicator scores fall below 50 percent for the program year.

(e) Sanctions based on performance failure will be applied to States if, for 2 consecutive years, the State fails to meet 90 percent of the overall State program score, 90 percent of the overall State indicator score, or 50 percent on any individual indicator score for the same program or indicator.

<u>§ 463.195 What should States expect when a sanction is applied to the Governor's Reserve Allotment</u>?

(a) The Secretary of Labor and the Secretary of Education will reduce the Governor's Reserve Allotment by 5 percent of the maximum available amount for the immediately succeeding program year if:

(1) The State fails to submit the State annual performance reports as required under WIOA sec. 116(d)(2), as defined in § 463.185; or

(2) The State fails to meet State adjusted levels of performance for the same primary performance indicator(s) under either § 463.190(d)(1) or (2) for the second consecutive year as defined in § 463.190.

(b) If the State fails under paragraphs (a)(1) and (2) of this section in the same program year, the Secretary of Labor and the Secretary of Education will reduce the Governor's Reserve Allotment by 10 percent of the maximum available amount for the immediately succeeding program year.

(c) If a State's Governor's Reserve Allotment is reduced:

(1) The reduced amount will not be returned to the State in the event that the State later improves performance or submits its annual performance report; and

(2) The Governor's reserve will continue to be set at the reduced level in each subsequent year until the Secretary of Labor or the Secretary of Education, dependent upon the impacted program, determines that the State met the State adjusted levels of performance for the applicable primary performance indicators and has submitted all of the required performance reports.

(d) A State may request review of a sanction the U.S. Department of Labor imposes in accordance with the provisions of § 683.800 of this chapter.

<u>§ 463.200 What other administrative actions will be applied to States' performance requirements</u>?

(a) In addition to sanctions for failure to report or failure to meet adjusted levels of performance, States will be subject to administrative actions in the case of poor performance.

(b) States' performance achievement on the individual primary indicators will be assessed in addition to the overall program score and overall indicator score. Based on this assessment, as clarified and explained in guidance, for performance on any individual primary indicator, the Secretary of Labor or the Secretary of Education will require the State to establish a performance risk plan to address continuous improvement on the individual primary indicator.

§ 463.205 What performance indicators apply to local areas?

(a) Each local workforce investment area in a State under title I of WIOA is subject to the same primary indicators of performance for the core programs for WIOA title I under § 463.155(a)(1) and (d) that apply to the State.

(b) In addition to the indicators described in paragraph (a) of this section, under § 463.165, the Governor may apply additional indicators of performance to local areas in the State.

(c) States must annually make local area performance reports available to the public using a template that the Departments will disseminate in guidance, including by electronic means. The State must provide electronic access to the public local area performance report in its annual State performance report.

(d) The local area performance report must provide information on the actual performance levels for the local area based on quarterly wage records consistent with the requirements for States under § 463.175.

(e) The local area performance report must include:

(1) Performance levels achieved by the local area for the indicators for the adult, dislocated worker, and youth programs under title I of WIOA in § 463.155(a)(1) and (3);

(2) Performance levels achieved by the local area for the adult, dislocated worker, and youth programs under title I of WIOA in § 463.160(a);

(3) The percentage of a local area's allotment under WIOA sec. 128(b) and sec. 133(b) that the local area spent on administrative costs; and

(4) Other information that facilitates comparisons of programs with programs in other local areas (or planning regions if the local area is part of a planning region).

(f) States must comply with any requirements from sec. 116(d)(3) of WIOA as explained in guidance, including the use of the performance reporting template, issued by the Department of Labor.

§ 463.210 How are local performance levels established?

(a) The objective statistical adjustment model required under sec. 116(b)(3)(A)(viii) of WIOA and described in the § 463.170 must be:

(1) Used to establish local performance targets for the upcoming program year, and

(2) Used to revise performance levels at the end of a program year based on actual circumstances, consistent with WIOA sec. 116(c)(3).

(b) The Governor, Local Board, and chief elected official must reach agreement on local targets and levels based on a negotiations process before the start of a program year with the use of the objective statistical model described in paragraph (a) of this section. The negotiations will include a discussion of circumstances not accounted for in the model and will take into account the extent to which the levels promote continuous improvement. The objective statistical model will be applied at the end of the program year based on actual conditions experienced.

(c) The negotiations process described in paragraph (b) of this section must be developed by the Governor and disseminated to all Local Boards and chief elected officials.

(d) The Local Boards may apply performance measures to service providers that differ from the performance measures that apply to the local area. These performance measures should be established after considering:

(1) The established local performance levels,

(2) The services provided by each provider; and

(3) The populations the service providers are intended to serve.

<u>§ 463.215 Under what circumstances are local areas eligible for State Incentive Grants</u>?

(a) The Governor is not required to award local incentive funds. The Governor may use non-Federal funds to create incentives for Local Boards to implement pay-for-performance contract strategies for the delivery of training services described in WIOA sec. 134(c)(3) or activities described in WIOA sec. 129(c)(2) in the local areas served by the Local Boards.

(b) Pay-for-performance contract strategies must be implemented in accordance with §§ 683.500 through 683.530 of this chapter and § 463.160.

<u>§ 463.220 Under what circumstances may a corrective action or sanction be applied to local areas for poor performance</u>?

(a) If a local area fails to meet the levels of performance agreed to under § 463.210 for the primary indicators of performance in the adult, dislocated worker, and youth programs authorized under WIOA title I in any program year, technical assistance

must be provided by the Governor or, upon the Governor's request, by the Secretary of Labor.

(1) A State must establish the threshold for failure in meeting levels of performance for a local area before negotiating the adjusted levels of performance for the local area.

(2) The technical assistance may include:

(i) Assistance in the development of a performance improvement plan,

(ii) The development of a modified local or regional plan; or

(iii) Other actions designed to assist the local area in improving performance.

(b) If a local area fails to meet the levels of performance agreed to under § 463.210 for the primary indicators of performance for the adult, dislocated worker, and youth programs authorized under WIOA title I for a third consecutive program year, the Governor must take corrective actions. The corrective actions must include the development of a reorganization plan under which the Governor:

(1) Requires the appointment and certification of a new Local Board, consistent with the criteria established under § 679.350 of this chapter;

(2) Prohibits the use of eligible providers and one-stop partners that have been identified as achieving poor levels of performance; or

(3) Takes such other significant actions as the Governor determines are appropriate.

<u>§ 463.225 Under what circumstances may local areas appeal a reorganization plan</u>?

(a) The Local Board and chief elected official for a local area that is subject to a reorganization plan under WIOA sec. 116(g)(2)(A) may appeal to the Governor to

rescind or revise the reorganization plan not later than 30 days after receiving notice of the reorganization plan. The Governor must make a final decision within 30 days after receipt of the appeal.

(b) The Local Board and chief elected official may appeal the final decision of the Governor to the Secretary of Labor not later than 30 days after receiving the decision from the Governor. Any appeal of the Governor's final decision must be:

(1) Appealed jointly by the Local Board and chief elected official to the Secretary under § 683.650 of this chapter; and

(2) Must be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, 200 Constitution Ave. N.W., Washington DC 20210, Attention: ASET. A copy of the appeal must be simultaneously provided to the Governor.

(c) Upon receipt of the joint appeal from the Local Board and chief elected official, the Secretary must make a final decision within 30 days. In making this determination the Secretary may consider any comments submitted by the Governor in response to the appeals.

(d) The decision by the Governor to impose a reorganization plan becomes effective at the time it is issued and remains effective unless the Secretary of Labor rescinds or revises the reorganization plan under WIOA sec. 116(g)(2)(B)(ii).

<u>§ 463.230 What information is required for the eligible training provider performance reports</u>?

(a) States are required to make available, and publish, annually using a template the Departments will disseminate including through electronic means, the eligible

training provider performance reports for eligible training providers who provide services under sec. 122 of WIOA that are described in §§ 680.400 through 680.530 of this chapter. These reports at a minimum must include, consistent with § 463.175 and with respect to each program of study that is eligible to receive funds under WIOA:

(1) The total number of participants who received training services under the adult and dislocated worker programs authorized under WIOA title I for the most recent year and the 3 preceding program years, including:

(i) The number of participants under the adult and dislocated worker programs disaggregated by barriers to employment;

(ii) The number of participants under the adult and dislocated worker programs disaggregated by race, ethnicity, sex, and age;

(iii) The number of participants under the adult and dislocated worker programs disaggregated by the type of training entity for the most recent program year and the 3 preceding program years;

(2) The total number of participants who exit a program of study or its equivalent, including disaggregate counts by the type of training entity during the most recent program year and the 3 preceding program years;

(3) The average cost-per-participant for participants who received training services for the most recent program year and the 3 preceding program years disaggregated by type of training entity;

(4) The total number of individuals exiting from the program of study (or the equivalent); and

(5) The levels of performance achieved for the primary indicators of performance identified in § 463.155(a)(1)(i) through (iv) with respect to all individuals in a program of study (or the equivalent).

(b) Registered apprenticeship programs are not required to submit performance information. See § 680.470 of this chapter. If a registered apprenticeship program voluntarily submits performance information to a State, the State must include this information in the report.

(c) The State must provide electronic access to the public eligible training provider performance report in its annual State performance report.

(d) States must comply with any requirements from sec. 116(d)(4) of WIOA as explained in guidance issued by the Department of Labor.

(e) The Governor may designate one or more State agencies such as a State education agency or State educational authority to assist in overseeing eligible training provider performance and facilitating the production and dissemination of eligible training provider performance reports. These agencies may be the same agencies that are designated as responsible for administering the eligible training providers list as provided under § 680.500 of this chapter. The Governor or such agencies, or authorities, is responsible for:

(1) Facilitating data matches between ETP records and UI wage data in order to produce the report;

(2) The creation and dissemination of the reports as described in paragraphs (a) through (d) of this section;

(3) Coordinating the dissemination of the performance reports with the eligible training provider list and the information required to accompany the list, as provided in § 680.500 of this chapter.

§ 463.235 What are the reporting requirements for individual records for core Workforce Innovation and Opportunity Act title I, III, and IV programs?

(a) On a quarterly basis, each State must submit to the Secretary of Labor or Secretary of Education, as appropriate, individual records that include demographic information, information on services received, and information on resulting outcomes, as appropriate, for each reportable individual in a core program administered by the Secretary of Labor or Education. Such records submitted to the Department of Labor must be submitted in one record that is integrated across all core Department of Labor programs.

(b) For individual records submitted to the Secretary of Labor, records must be integrated across all core programs administered by the Secretary of Labor in one single file.

(c) States must comply with any other requirements from sec. 116(d)(2) of WIOA as explained in guidance issued by the Department of Labor.

§ 463.240 What are the requirements for data validation of State annual performance reports?

(a) States must establish procedures, consistent with guidelines issued by the Secretary of Education or Secretary of Labor, to submit complete annual performance reports that contain information that is valid and reliable.

(b) If a State fails to meet standards in paragraph (a) of this section as determined by the Secretary of Labor or Secretary of Education, the appropriate Secretary will provide technical assistance and may require the State to develop and implement corrective actions, which may require the State to provide training for its subrecipients.

(c) The Secretary of Labor and the Secretary of Education will provide training and technical assistance to States in order to implement this section.

11. Add subpart J to part 463, as added elsewhere in this issue of the Federal Register, to read as follows:

Subpart J – Description of the One-stop System Under Title I of the Workforce Innovation and Opportunity Act

Sec.	
463.300	What is the one-stop delivery system?
463.305	What is a comprehensive one-stop center and what must be provided there?
463.310	What is an affiliated site and what must be provided there?
463.315	Can a stand-alone Wagner-Peyser employment service office be designated as an affiliated one-stop site?
463.320	Are there any requirements for networks of eligible one-stop partners or specialized centers?
463.400	Who are the required one-stop partners?
463.405	Is Temporary Assistance for Needy Families a required one-stop partner?
463.410	What other entities may serve as one-stop partners?
463.415	What entity serves as the one-stop partner for a particular program in the local area?
463.420	What are the roles and responsibilities of the required one-stop partners?
463.425	What are the applicable career services that must be provided through the one-stop delivery system by required one-stop partners?
463.430	What are career services?
463.435	What are the business services provided through the one-stop delivery system, and how are they provided?
463.440	When may a fee be charged for the business services in this subpart?
463.500	What is the Memorandum of Understanding for the one-stop delivery system and what must be included in the Memorandum of Understanding?

463.505	Is there a single Memorandum of Understanding for the local area, or must there be separate Memoranda of Understanding between the Local Board and each partner?
463.510	How should the Memorandum of Understanding be negotiated?
463.600	Who may operate one-stop centers?
463.605	How is the one-stop operator selected?
463.610	How is sole source selection of one-stop operators accomplished?
463.615	Can an entity serving as one-stop operator compete to be a one-stop operator under the procurement requirements of this subpart?
463.620	What is the one-stop operator's role?
463.625	Can a one-stop operator also be a service provider?
463.630	Can State merit staff still work in a one-stop where the operator is not a governmental entity?
463.635	What is the effective date of the provisions of this subpart?
463.700	What are one-stop infrastructure costs?
463.705	What guidance must the Governor issue regarding one-stop infrastructure funding?
463.710	How are infrastructure costs funded?
463.715	How are one-stop infrastructure costs funded in the local funding mechanism?
463.720	What funds are used to pay for infrastructure costs in the local one-stop infrastructure funding mechanism?
463.725	What happens if consensus on infrastructure funding is not reached at the local level between the Local Board, chief elected officials, and one-stop partners?
463.730	What is the State one-stop infrastructure funding mechanism?
463.735	How are partner contributions determined in the State one-stop funding mechanism?
463.740	What funds are used to pay for infrastructure costs in the State one-stop infrastructure funding mechanism?
463.745	How is the allocation formula used by the Governor determined in the State one-stop funding mechanism?
463.750	When and how can a one-stop partner appeal a one-stop infrastructure amount designated by the State under the State infrastructure funding mechanism?
463.755	What are the required elements regarding infrastructure funding that must be included in the one-stop Memorandum of Understanding?
361.760	How do one-stop partners jointly fund other shared costs under the Memorandum of Understanding?
463.800	How are one-stop centers and one-stop delivery systems certified for effectiveness, physical and programmatic accessibility, and continuous improvement?
463.900	What is the common identifier to be used by each one-stop delivery system?

Subpart J – Description of the One-stop System Under Title I of the Workforce Innovation and Opportunity Act

§ 463.300 What is the one-stop delivery system?

(a) The one-stop delivery system brings together workforce development, educational, and other human resource services in a seamless customer-focused service delivery network that enhances access to the programs' services and improves long-term employment outcomes for individuals receiving assistance. One-stop partners administer separately funded programs as a set of integrated streamlined services to customers.

(b) Title I of the Workforce Innovation and Opportunity Act (WIOA) assigns responsibilities at the local, State, and Federal level to ensure the creation and maintenance of a one-stop delivery system that enhances the range and quality of education and workforce development services that business and individual customers can access.

(c) The system must include at least one comprehensive physical center in each local area as described in § 463.305.

(d) The system may also have additional arrangements to supplement the comprehensive center. These arrangements include:

(1) An affiliated site or a network of affiliated sites, where one or more partners make programs, services, and activities available, as described in § 463.310;

(2) A network of eligible one-stop partners, as described in §§ 463.400 through 463.410, through which each partner provides one or more of the programs, services, and activities that are linked, physically or technologically, to an affiliated site or access point that assures customers are provided information on the availability of career services, as

well as other program services and activities, regardless of where they initially enter the workforce system in the local area; and

(3) Specialized centers that address specific needs, including those of dislocated workers, youth, or key industry sectors, or clusters.

(e) Required one-stop partner programs must provide access to programs, services, and activities through electronic means if applicable and practicable. This is in addition to providing access to services through the mandatory comprehensive physical one-stop center and any affiliated sites or specialized centers. The provision of programs and services by electronic methods such as Web sites, telephones, or other means must improve the efficiency, coordination, and quality of one-stop partner services. Electronic delivery must not replace access to such services at a comprehensive one-stop center or be a substitute to making services available at an affiliated site if the partner is participating in an affiliated site. Electronic delivery systems must be in compliance with the nondiscrimination and equal opportunity provisions of WIOA in sec. 188 and its implementing regulations at 29 CFR part 37.

(f) The design of the local area's one-stop delivery system must be described in the Memorandum of Understanding (MOU) executed with the one-stop partners, described in § 463.500.

<u>§ 463.305 What is a comprehensive one-stop center and what must be provided there</u>?

(a) A comprehensive one-stop center is a physical location where jobseeker and employer customers can access the programs, services, and activities of all required one-stop partners. A comprehensive one-stop center must have at least one title I staff person physically present.

(b) The comprehensive one-stop center must provide:

(1) Career services, described in § 463.430;

(2) Access to training services described in § 680.200 of this chapter;

(3) Access to any employment and training activities carried out under sec. 134(d) of WIOA;

(4) Access to programs and activities carried out by one-stop partners listed in §§ 463.400 through 463.410, including Wagner-Peyser employment services; and

(5) Workforce and labor market information.

(c) Customers must have access to these programs, services, and activities during regular business days at a comprehensive one-stop center. The Local Board may establish other service hours at other times to accommodate the schedules of individuals who work on regular business days. The State Board will evaluate the hours of access to service as part of the evaluation of effectiveness in the one-stop certification process described in § 463.800(b).

(d) "Access" to programs and services means having either: program staff physically present at the location; having partner program staff physically present at the one-stop appropriately trained to provide information to customers about the programs, services, and activities available through partner programs; or providing direct linkage through technology to program staff who can provide meaningful information or services.

(1) A "direct linkage" means providing direct connection at the one-stop, within a reasonable time, by phone or through a real-time Web-based communication to a program staff member who can provide program information or services to the customer.

(2) A “direct linkage” does not include providing a phone number or computer Web site that can be used at an individual’s home; providing information, pamphlets, or materials; or making arrangements for the customer to receive services at a later time or on a different day.

(e) All comprehensive one-stop centers must be physically and programmatically accessible to individuals with disabilities, as described in § 463.800.

§ 463.310 What is an affiliated site and what must be provided there?

(a) An affiliated site, or affiliate one-stop center, is a site that makes available to jobseeker and employer customers one or more of the one-stop partners’ programs, services, and activities. An affiliated site does not need to provide access to every required one-stop partner program. The frequency of program staff’s physical presence in the affiliated site will be determined at the local level. Affiliated sites are access points in addition to the Comprehensive one-stop center(s) in each local area. If used by local areas as a part of the service delivery strategy, affiliate sites should be implemented in a manner that supplements and enhances customer access to services.

(b) As described in § 463.315, Wagner-Peyser employment services cannot be a stand-alone affiliated site.

(c) States, in conjunction with the Local Workforce Development Boards, must examine lease agreements and property holdings throughout the one-stop delivery system in order to use property in an efficient and effective way. Where necessary and appropriate, States and Local Boards must take expeditious steps to align lease expiration dates with efforts to consolidate one-stop operations into service points where Wagner-

Peyser employment services are collocated as soon as reasonably possible. These steps must be included in the State Plan.

(d) All affiliated sites must be physically and programmatically accessible to individuals with disabilities, as described in § 463.800.

§ 463.315 Can a stand-alone Wagner-Peyser employment service office be designated as an affiliated one-stop site?

(a) Separate stand-alone Wagner-Peyser employment services offices are not permitted under WIOA, as also described in § 652.202 of this chapter.

(b) If Wagner-Peyser employment services are provided at an affiliated site, there must be at least one other partner in the affiliated site with staff physically present more than 50 percent of the time the center is open. Additionally, the other partner must not be the partner administering local veterans' employment representatives, disabled veterans' outreach program specialists, or unemployment compensation programs. If Wagner-Peyser employment services and any of these three programs are provided at an affiliated site, an additional partner must have staff present in the center more than 50 percent of the time the center is open.

§ 463.320 Are there any requirements for networks of eligible one-stop partners or specialized centers?

Any network of one-stop partners or specialized centers must be connected to, such as having processes in place to make referrals to, the comprehensive and any appropriate affiliate one-stop centers. Wagner-Peyser employment services cannot stand alone in a specialized center. Just as described in § 463.315 for an affiliated site, a specialized center must include other programs besides Wagner-Peyser employment

services, local veterans' employment representatives, disabled veterans' outreach program specialists, and unemployment compensation.

§ 463.400 Who are the required one-stop partners?

(a) Section 121(b)(1)(B) of WIOA identifies the entities that are required partners in the local one-stop systems.

(b) The required partners are the entities responsible for administering the following programs and activities in the local area:

(1) Programs authorized under title I of WIOA, including:

(i) Adults;

(ii) Dislocated workers;

(iii) Youth;

(iv) Job Corps;

(v) YouthBuild;

(vi) Native American programs; and

(vii) Migrant and seasonal farmworker programs;

(2) Employment services authorized under the Wagner-Peyser Act (29 U.S.C. 49 et seq.);

(3) Adult education and literacy activities authorized under title II of WIOA;

(4) The Vocational Rehabilitation program authorized under title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 et seq.);

(5) The Senior Community Service Employment Program authorized under title V of the Older Americans Act of 1965 (42 U.S.C. 3056 et seq.);

(6) Career and technical education programs at the post-secondary level authorized under the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 et seq.);

(7) Trade Adjustment Assistance activities authorized under chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2271 et seq.);

(8) Jobs for Veterans State Grants programs authorized under chapter 41 of title 38, U.S.C.;

(9) Employment and training activities carried out under the Community Services Block Grant (42 U.S.C. 9901 et seq.);

(10) Employment and training activities carried out by the Department of Housing and Urban Development;

(11) Programs authorized under State unemployment compensation laws (in accordance with applicable Federal law);

(12) Programs authorized under sec. 212 of the Second Chance Act of 2007 (42 U.S.C. 17532); and

(13) Temporary Assistance for Needy Families (TANF) authorized under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), unless exempted by the Governor under § 463.405(b).

§ 463.405 Is Temporary Assistance for Needy Families a required one-stop partner?

(a) Yes, TANF, authorized under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), is a required partner. (WIOA sec. 121(b)(1)(B)(xiii)).

(b) The Governor may determine that TANF will not be a required partner in the State, or within some specific local areas in the State. In this instance, the Governor must

notify the Secretaries of the U.S. Departments of Labor and Health and Human Services in writing of this determination.

(c) In States, or local areas within a State, where the Governor has determined that TANF is not required to be a partner, local TANF programs may still opt to be a one-stop partner, or to work in collaboration with the one-stop center.

§ 463.410 What other entities may serve as one-stop partners?

(a) 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 Board and chief elected official(s) approve the entity's participation.

(b) Additional partners may include:

(1) Employment and training programs administered by the Social Security Administration, including the Ticket to Work and Self-Sufficiency Program established under sec. 1148 of the Social Security Act (42 U.S.C. 1320b-19);

(2) Employment and training programs carried out by the Small Business Administration;

(3) Supplemental Nutrition Assistance Program (SNAP) employment and training programs, authorized under secs. 6(d)(4) and 6(o) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(d)(4));

(4) Client Assistance Program authorized under sec. 112 of the Rehabilitation Act of 1973 (29 U.S.C. 732);

(5) Programs authorized under the National and Community Service Act of 1990 (42 U.S.C. 12501 et seq.); and

(6) Other appropriate Federal, State or local programs, including employment, education, and training programs provided by public libraries or in the private sector.

§ 463.415 What entity serves as the one-stop partner for a particular program in the local area?

(a) The entity that carries out the program and activities listed in § 463.400 or § 463.405, and therefore serves as the one-stop partner, is the grant recipient, administrative entity, or organization responsible for administering the funds of the specified program in the local area. The term "entity" does not include the service providers that contract with, or are subrecipients of, the local administrative entity. For programs that do not include local administrative entities, the responsible State agency should be the partner. Specific entities for particular programs are identified in paragraph (b) of this section. If a program or activity listed in § 463.400 is not carried out in a local area, the requirements relating to a required one-stop partner are not applicable to such program or activity in that local one-stop system.

(b) For title II of WIOA, the entity that carries out the program for the purposes of paragraph (a) of this section is the sole entity or agency in the State or outlying area responsible for administering or supervising policy for adult education and literacy activities in the State or outlying area. The State eligible entity may delegate its responsibilities under paragraph (a) of this section to one or more eligible providers or consortium of eligible providers.

(c) For the Vocational Rehabilitation program, authorized under title I of the Rehabilitation Act, the entity that carries out the program for the purposes of paragraph (a) of this section is the designated State agencies or designated State units specified

under sec. 101(a)(2) of the Rehabilitation Act that is primarily concerned with vocational rehabilitation, or vocational and other rehabilitation, of individuals with disabilities.

(d) Under WIOA, the national programs, including Job Corps, the Native American program, YouthBuild, and Migrant and Seasonal Farmworker programs are required one-stop partners. The entity for the Native American program and Migrant and Seasonal Farmworker programs is the grantee of those respective programs. The entity for Job Corps is the Job Corps center.

(e) For the Carl D. Perkins Career and Technical Education Act of 2006, the entity that carries out the program for the purposes of paragraph (a) of this section is the State eligible agency. The State eligible agency may delegate its responsibilities under paragraph (a) of this section to one or more State agencies, eligible recipients at the post-secondary level, or consortia of eligible recipients at the post-secondary level.

§ 463.420 What are the roles and responsibilities of the required one-stop partners?

Each required partner must:

(a) Provide access to its programs or activities through the one-stop delivery system, in addition to any other appropriate locations; (WIOA sec. 121(b)(1)(A)(i).)

(b) Use a portion of funds made available to the partner's program, to the extent consistent with the Federal law authorizing the partner's program and with Federal cost principles in 2 CFR parts 200 and 3474 (requiring, among other things, that costs are allowable, reasonable, necessary, and allocable), to:

(1) Provide applicable career services; and

(2) Work collaboratively with the State and Local Boards to establish and maintain the one-stop delivery system. This includes jointly funding the one-stop infrastructure through partner contributions that are based upon:

(i) A reasonable cost allocation methodology by which infrastructure costs are charged to each partner in proportion to the relative benefits;

(ii) Federal cost principles; and

(iii) Any local administrative cost requirements in the Federal law authorizing the partner's program. (This is further described in § 463.700). (WIOA sec. 121(b)(1)(A)(ii).)

(c) Enter into an MOU with the Local Board relating to the operation of the one-stop system that meets the requirements of § 463.500(d);

(d) Participate in the operation of the one-stop system consistent with the terms of the MOU, requirements of authorizing laws, the Federal cost principles, and all other applicable legal requirements; (WIOA sec. 121(b)(1)(A)(iv)) and

(e) Provide representation on the State and Local Workforce Development Boards as required and participate in Board committees as needed. (WIOA secs. 101(b)(iii) and 107(b)(2)(C) and (D))

<u>§ 463.425 What are the applicable career services that must be provided through the one-stop delivery system by required one-stop partners</u>?

(a) The applicable career services to be delivered by required one-stop partners are those services listed in § 463.430 that are authorized to be provided under each partner's program.

(b) One-stop centers provide services to individual customers based on individual needs, including the seamless delivery of multiple services to individual customers. There is no required sequence of services. (WIOA sec. 121(e)(1)(A).)

§ 463.430 What are career services?

Career services, as identified in sec. 134(c)(2) of WIOA, consist of three types:

(a) Basic career services must be made available and, at a minimum, must include the following services, as consistent with allowable program activities and Federal cost principles:

(1) Determinations of whether the individual is eligible to receive assistance from the adult, dislocated worker, or youth programs;

(2) Outreach, intake (including worker profiling), and orientation to information and other services available through the one-stop delivery system;

(3) Initial assessment of skill levels including literacy, numeracy, and English language proficiency, as well as aptitudes, abilities (including skills gaps), and supportive services needs;

(4) Labor exchange services, including—

(i) Job search and placement assistance, and, when needed by an individual, career counseling, including—

(A) Provision of information on in-demand industry sectors and occupations (as defined in sec. 3(23) of WIOA); and,

(B) Provision of information on nontraditional employment; and

(ii) Appropriate recruitment and other business services on behalf of employers, including information and referrals to specialized business services other than those traditionally offered through the one-stop delivery system;

(5) Provision of referrals to and coordination of activities with other programs and services, including programs and services within the one-stop delivery system and, when appropriate, other workforce development programs;

(6) Provision of workforce and labor market employment statistics information, including the provision of accurate information relating to local, regional, and national labor market areas, including—

(i) Job vacancy listings in labor market areas;

(ii) Information on job skills necessary to obtain the vacant jobs listed; and

(iii) Information relating to local occupations in demand and the earnings, skill requirements, and opportunities for advancement for those jobs;

(7) Provision of performance information and program cost information on eligible providers of training services by program and type of providers;

(8) Provision of information, in usable and understandable formats and languages, about how the local area is performing on local performance accountability measures, as well as any additional performance information relating to the area's one-stop delivery system;

(9) Provision of information, in usable and understandable formats and languages, relating to the availability of supportive services or assistance, and appropriate referrals to those services and assistance, including: child care; child support; medical or child health assistance available through the State's Medicaid program and Children's

Health Insurance Program; benefits under SNAP; assistance through the earned income tax credit; and assistance under a State program for Temporary Assistance for Needy Families, and other supportive services and transportation provided through that program;

(10) Provision of information and assistance regarding filing claims for unemployment compensation, by which the one-stop must provide meaningful assistance to individuals seeking assistance in filing a claim for unemployment compensation.

(i) "Meaningful assistance" means:

(A) Providing assistance on-site using staff who are well-trained in unemployment compensation claims filing and the rights and responsibilities of claimants, or

(B) Providing assistance by phone or via other technology, as long as the assistance is provided by trained and available staff and within a reasonable time.

(ii) The costs associated in providing this assistance may be paid for by the State's unemployment insurance program, or the WIOA adult or dislocated worker programs, or some combination thereof.

(11) Assistance in establishing eligibility for programs of financial aid assistance for training and education programs not provided under WIOA.

(b) Individualized career services must be made available if determined to be appropriate in order for an individual to obtain or retain employment. These services include the following services, as consistent with program requirements and Federal cost principles:

(1) Comprehensive and specialized assessments of the skill levels and service needs of adults and dislocated workers, which may include—

(i) Diagnostic testing and use of other assessment tools; and

(ii) In-depth interviewing and evaluation to identify employment barriers and appropriate employment goals;

(2) Development of an individual employment plan, to identify the employment goals, appropriate achievement objectives, and appropriate combination of services for the participant to achieve his or her employment goals, including the list of, and information about, the eligible training providers (as described in § 680.180 of this chapter);

(3) Group counseling;

(4) Individual counseling;

(5) Career planning;

(6) Short-term pre-vocational services including development of learning skills, communication skills, interviewing skills, punctuality, personal maintenance skills, and professional conduct services to prepare individuals for unsubsidized employment or training;

(7) Internships and work experiences that are linked to careers (as described in § 680.170 of this chapter);

(8) Workforce preparation activities;

(9) Financial literacy services as described in sec. 129(b)(2)(D) of WIOA and § 681.500 of this chapter;

(10) Out-of-area job search assistance and relocation assistance; and

(11) English language acquisition and integrated education and training programs.

(c) Follow-up services must be provided, as appropriate, including: counseling regarding the workplace, for participants in adult or dislocated worker workforce investment activities who are placed in unsubsidized employment, for up to 12 months after the first day of employment.

§ 463.435 What are the business services provided through the one-stop delivery system, and how are they provided?

(a) Certain career services must be made available to local businesses, specifically labor exchange activities and labor market information described in §§ 463.430(a)(4)(ii) and (a)(6). Local areas must establish and develop relationships and networks with large and small employers and their intermediaries. (WIOA sec. 134(c)(1)(A)(iv)). Local areas also must develop, convene, or implement industry or sector partnerships. (WIOA sec. 134(c)(1)(A)(v)).

(b) Customized business services may be provided to employers, employer associations, or other such organizations (WIOA sec. 134(d)(1)(A)(ii)). These services are tailored for specific employers and may include:

(1) Customized screening and referral of qualified participants in training services to employers;

(2) Customized services to employers, employer associations, or other such organizations, on employment-related issues;

(3) Customized recruitment events and related services for employers including targeted job fairs;

(4) Human resource consultation services, including but not limited to assistance with:

(i) Writing/reviewing job descriptions and employee handbooks;

(ii) Developing performance evaluation and personnel policies;

(iii) Creating orientation sessions for new workers;

(iv) Honing job interview techniques for efficiency and compliance;

(v) Analyzing employee turnover; or

(vi) Explaining labor laws to help employers comply with wage/hour and safety/health regulations;

(5) Customized labor market information for specific employers, sectors, industries or clusters; and

(6) Other similar customized services.

(c) Local areas may also provide other business services and strategies that meet the workforce investment needs of area employers, in accordance with partner programs' statutory requirements and consistent with Federal cost principles. These business services may be provided through effective business intermediaries working in conjunction with the Local Board, or through the use of economic development, philanthropic, and other public and private resources in a manner determined appropriate by the Local Board and in cooperation with the State. Allowable activities, consistent with each partner's authorized activities, include, but are not limited to:

(1) Developing and implementing industry sector strategies (including strategies involving industry partnerships, regional skills alliances, industry skill panels, and sectoral skills partnerships);

(2) Customized assistance or referral for assistance in the development of a registered apprenticeship program;

(3) Developing and delivering innovative workforce investment services and strategies for area employers, which may include career pathways, skills upgrading, skill standard development and certification for recognized post-secondary credential or other employer use, and other effective initiatives for meeting the workforce investment needs of area employers and workers;

(4) Assistance to area employers in managing reductions in force in coordination with rapid response activities and with strategies for the aversion of layoffs, which may include strategies such as early identification of firms at risk of layoffs, use of feasibility studies to assess the needs of and options for at-risk firms, and the delivery of employment and training activities to address risk factors;

(5) The marketing of business services to appropriate area employers, including small and mid-sized employers; and

(6) Assisting employers with accessing local, State, and Federal tax credits.

(d) All business services and strategies must be reflected in the local plan, described in § 679.560(b)(3) of this chapter.

<u>§ 463.440 When may a fee be charged for the business services in this subpart</u>?

(a) There is no requirement that a fee-for-service be charged to employers.

(b) No fee may be charged for services provided in § 463.435(a).

(c) A fee may be charged for services provided under § 463.435(b) and (c). Services provided under § 463.435(c) may be provided through effective business intermediaries working in conjunction with the Local Board and may also be provided on a fee-for-service basis or through the leveraging of economic development, philanthropic, and other public and private resources in a manner determined appropriate by the Local

Board. The Local Workforce Development Board may examine the services provided compared with the assets and resources available within the local one-stop delivery system and through its partners to determine an appropriate cost structure for services, if any.

§ 463.500 What is the Memorandum of Understanding for the one-stop delivery system and what must be included in the Memorandum of Understanding ?

(a) The MOU is the product of local discussion and negotiation, and is an agreement developed and executed between the Local Board, with the agreement of the chief elected official and the one-stop partners, relating to the operation of the one-stop delivery system in the local area. Two or more local areas in a region may develop a single joint MOU, if they are in a region that has submitted a regional plan under sec. 106 of WIOA.

(b) The MOU must include:

(1) A description of services to be provided through the one-stop delivery system, including the manner in which the services will be coordinated and delivered through the system;

(2) A final plan, or an interim plan if needed, on how the costs of the services and the operating costs of the system will be funded, including:

(i) Funding of infrastructure costs of one-stop centers in accordance with §§ 463.700 through 463.755; and

(ii) Funding of the shared services and operating costs of the one-stop delivery system described in § 463.760;

(3) Methods for referring individuals between the one-stop operators and partners for appropriate services and activities;

(4) Methods to ensure that the needs of workers, youth, and individuals with barriers to employment, including individuals with disabilities, are addressed in providing access to services, including access to technology and materials that are available through the one-stop delivery system;

(5) The duration of the MOU and procedures for amending it; and

(6) Assurances that each MOU will be reviewed, and if substantial changes have occurred, renewed, not less than once every 3-year period to ensure appropriate funding and delivery of services.

(c) The MOU may contain any other provisions agreed to by the parties that are consistent with WIOA title I, the authorizing statutes and regulations of one-stop partner programs, and the WIOA regulations. (WIOA sec. 121(c).)

(d) When fully executed, the MOU must contain the signatures of the Local Board, one-stop partners, the chief elected official(s), and the time period in which the agreement is effective. The MOU must be updated not less than every 3 years to reflect any changes in the signatory official of the Board, one-stop partners, and chief elected officials, or one-stop infrastructure funding.

(e) If a one-stop partner appeal to the State regarding infrastructure costs, using the process described in § 463.750, results in a change to the one-stop partner's infrastructure cost contributions, the MOU must be updated to reflect the final one-stop partner infrastructure cost contributions.

§ 463.505 Is there a single Memorandum of Understanding for the local area, or must there be separate Memoranda of Understanding between the Local Board and each partner?

(a) A single "umbrella" MOU may be developed that addresses the issues relating to the local one-stop delivery system for the Local Board, chief elected official and all partners. Alternatively, the Local Board (with agreement of chief elected official) may enter into separate agreements between each partner or groups of partners.

(b) Under either approach, the requirements described in § 463.500 apply. Since funds are generally appropriated annually, the Local Board may negotiate financial agreements with each partner annually to update funding of services and operating costs of the system under the MOU.

§ 463.510 How should the Memorandum of Understanding be negotiated?

(a) WIOA emphasizes full and effective partnerships between Local Boards, chief elected officials, and one-stop partners. Local Boards and partners must enter into good-faith negotiations. Local Boards, chief elected officials, and one-stop partners may also request assistance from a State agency responsible for administering the partner program, the Governor, State Board, or other appropriate parties on other aspects of the MOU.

(b) Local Boards and one-stop partners must establish, in the MOU, a final plan for how the Local Board and programs will fund the infrastructure costs of the one-stop centers. If a final plan regarding infrastructure costs is not complete when other sections of the MOU are ready, an interim infrastructure cost plan may be included instead, as described in § 463.715(c). Once the final infrastructure cost plan is approved, the Local

Board and one-stop partners must amend the MOU to include the final plan for funding infrastructure costs of the one-stop centers, including a description of the funding mechanism established by the Governor relevant to the local area. Infrastructure cost funding is described in detail in subpart E of this part. (WIOA sec. 121(h)(2).)

(c) The Local Board must report to the State Board, Governor, and relevant State agency when MOU negotiations with one-stop partners have reached an impasse.

(1) The Local Board and partners must document the negotiations and efforts that have taken place in the MOU. The State Board, one-stop partner programs, and the Governor may consult with the appropriate Federal agencies to address impasse situations related to issues other than infrastructure funding after attempting to address the impasse. Impasses related to infrastructure cost funding must be resolved using the State infrastructure cost funding mechanism described in § 463.730.

(2) The Local Board must report failure to execute an MOU with a required partner to the Governor, State Board, and the State agency responsible for administering the partner's program. Additionally, if the State cannot assist the Local Board in resolving the impasse, the Governor or the State Board must report the failure to the Secretary of Labor and to the head of any other Federal agency with responsibility for oversight of a partner's program.

<u>§ 463.600 Who may operate one-stop centers?</u>

(a) One-stop operators may be a single entity (public, private, or nonprofit) or a consortium of entities. If the consortium of entities is one of one-stop partners, it must include a minimum of three of the one-stop partners described in § 463.400.

(b) The one-stop operator may operate one or more one-stop centers. There may be more than one one-stop operator in a local area.

(c) The types of entities that may be a one-stop operator include:

(1) An institution of higher education;

(2) An Employment Service State agency established under the Wagner-Peyser Act;

(3) A community-based organization, nonprofit organization, or workforce intermediary;

(4) A private for-profit entity;

(5) A government agency;

(6) A Local Board, with the approval of the chief local elected official and the Governor; or

(7) Another interested organization or entity, which is capable of carrying out the duties of the one-stop operator. Examples may include a local chamber of commerce or other business organization, or a labor organization.

(d) Elementary schools and secondary schools are not eligible as one-stop operators, except that a nontraditional public secondary school such as a night school, adult school, or an area career and technical education school may be selected.

(e) The State and Local Boards must ensure that, in carrying out WIOA programs and activities, one-stop operators:

(1) Disclose any potential conflicts of interest arising from the relationships of the operators with particular training service providers or other service providers (further discussed in § 679.430 of this chapter);

(2) Do not establish practices that create disincentives to providing services to individuals with barriers to employment who may require longer-term career and training services; and

(3) Comply with Federal regulations and procurement policies relating to the calculation and use of profits, including those at § 683.295 of this chapter, the Uniform Guidance at 2 CFR chapter II, and other applicable regulations and policies.

§ 463.605 How is the one-stop operator selected?

(a) Consistent with paragraphs (b) and (c) of this section, the Local Board must select the one-stop operator through a competitive process, as required by sec. 121(d)(2)(A) of WIOA, at least once every 4 years. A State may require, or a Local Board may choose to implement, a competitive selection process more than once every 4 years.

(b) In instances in which a State is conducting the competitive process described in paragraph (a) of this section, the State must follow the same policies and procedures it uses for procurement with non-Federal funds.

(c) All other non-Federal entities, including subrecipients of a State (such as local areas), must use a competitive process based on the principles of competitive procurement in the Uniform Administrative Guidance set out at 2 CFR 200.318 through 200.326.

(d) Entities described in paragraph (c) of this section must first determine the nature of the process to be used to comply with sec. 121(d)(2)(A) of WIOA. The acceptable processes are:

(1) Procurement by sealed bids;

(2) Procurement by competitive proposals; or

(3) Procurement by sole source, permitted only if:

(i) Analysis of market conditions and other factors lead to a determination that it is necessary to use sole-source procurement because:

(A) There is only one entity that could serve as an operator; or

(B) Unusual and compelling urgency will not permit a delay resulting from competitive solicitation; or

(ii) Results of the competition conducted under paragraphs (d)(1) or (2) of this section were determined to be inadequate.

(e) Entities must prepare written documentation explaining the determination concerning the nature of the competitive process to be followed in selecting a one-stop operator.

<u>§ 463.610 How is sole source selection of one-stop operators accomplished</u>?

(a) As set forth in § 463.605(d)(3), under certain conditions, sole source procurement is an allowable method of procurement.

(b) In the event that sole source procurement is determined necessary and reasonable, in accordance with § 463.605(d)(3), written documentation must be prepared and maintained concerning the entire process of making such a selection.

(c) Such sole source procurement must include appropriate conflict of interest policies and procedures. These policies and procedures must conform to the specifications in § 679.430 of this chapter for demonstrating internal controls and preventing conflict of interest.

(d) A Local Board can be selected as a one-stop operator through sole source procurement only with agreement of the chief elected official in the local area and the Governor. The Local Board must establish sufficient conflict of interest policies and procedures and they must be approved by the Governor.

§ 463.615 Can an entity serving as one-stop operator compete to be a one-stop operator under the procurement requirements of this subpart?

(a) Local Boards can compete for and be selected as one-stop operators, as long as appropriate firewalls and conflict of interest policies and procedures are in place. These policies and procedures must conform to the specifications in § 679.430 of this chapter for demonstrating internal controls and preventing conflict of interest.

(b) State and local agencies can compete for and be selected as one-stop operators by the Local Board, as long as appropriate firewalls and conflict of interest policies and procedures are in place. These policies and procedures must conform to the specifications in § 679.430 of this chapter for demonstrating internal controls and preventing conflict of interest.

(c) In the case of single State areas where the State Board serves as the Local Board, the State agency is eligible to compete for and be selected as operator as long as appropriate firewalls and conflict of interest policies are in place and followed for the competition. These policies and procedures must conform to the specifications in § 679.430 of this chapter for demonstrating internal controls and preventing conflict of interest.

§ 463.620 What is the one-stop operator's role?

(a) At a minimum, the one-stop operator must coordinate the service delivery of required one-stop partners and service providers. Local Boards may establish additional roles of one-stop operator, including, but not limited to: coordinating service providers within the center and across the one-stop system, being the primary provider of services within the center, providing some of the services within the center, or coordinating service delivery in a multi-center area. The competition for a one-stop operator must clearly articulate the role of the one-stop operator.

(b) A one-stop operator may not perform the following functions: convene system stakeholders to assist in the development of the local plan; prepare and submit local plans (as required under sec. 107 of WIOA); be responsible for oversight of itself; manage or significantly participate in the competitive selection process for one-stop operators; select or terminate one-stop operators, career services, and youth providers; negotiate local performance accountability measures; and develop and submit budget for activities of the Local Board in the local area. An entity serving as a one-stop operator may perform some or all of these functions if it also serves in another capacity, if it has established sufficient firewalls and conflict of interest policies. The policies must conform to the specifications in § 679.430 of this chapter for demonstrating internal controls and preventing conflict of interest.

<u>§ 463.625 Can a one-stop operator also be a service provider</u>?

Yes, but there must be appropriate firewalls in place in regards to the competition, and subsequent oversight, monitoring, and evaluation of performance of the service provider. The operator cannot develop, manage or conduct the competition of a service provider in which it intends to compete. In cases where an operator is also a service

provider, there must be firewalls and internal controls within the operator-service provider entity, as well as specific policies and procedures at the Local Board level regarding oversight, monitoring, and evaluation of performance of the service provider. The firewalls must conform to the specifications in § 679.430 of this chapter for demonstrating internal controls and preventing conflict of interest.

§ 463.630 Can State merit staff still work in a one-stop where the operator is not a governmental entity?

Yes. State merit staff can continue to perform functions and activities in the one-stop career center. The Local Board and one-stop operator must establish a system for management of merit staff in accordance with State policies and procedures. Continued use of State merit staff may be included in the competition for and final contract with the one-stop operator.

§ 463.635 What is the effective date of the provisions of this subpart?

(a) No later than June 30, 2017, one-stop operators selected under the competitive process described in this subpart must be in place and operating the one-stop.

(b) By June 30, 2016, every Local Board must demonstrate it is taking steps to prepare for competition of its one-stop operator. This demonstration may include, but is not limited to, market research, requests for information, and conducting a cost and price analysis.

§ 463.700 What are one-stop infrastructure costs?

(a) Infrastructure costs of one-stop centers are nonpersonnel costs that are necessary for the general operation of the one-stop center, including:

(1) Rental of the facilities;

(2) Utilities and maintenance;

(3) Equipment (including assessment-related products and assistive technology for individuals with disabilities); and

(4) Technology to facilitate access to the one-stop center, including technology used for the center's planning and outreach activities.

(b) Local Boards may consider common identifier costs as costs of one-stop infrastructure.

(c) Each entity that carries out a program or activities in a local one-stop center, described in §§ 463.400 through 463.410, must use a portion of the funds available for the program and activities to maintain the one-stop delivery system, including payment of the infrastructure costs of one-stop centers. These payments must be in accordance with this subpart; Federal cost principles, which require that all costs must be allowable, reasonable, necessary, and allocable to the program; and all other applicable legal requirements.

§ 463.705 What guidance must the Governor issue regarding one-stop infrastructure funding?

(a) The Governor, after consultation with chief elected officials, the State Board, and Local Boards, and consistent with guidance and policies provided by the State Board, must develop and issue guidance for use by local areas, specifically:

(1) Guidelines for State-administered one-stop partner programs for determining such programs' contributions to a one-stop delivery system, based on such programs' proportionate use of such system consistent with Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for

Federal Awards in 2 CFR part 200, including determining funding for the costs of infrastructure; and

(2) Guidance to assist Local Boards, chief elected officials, and one-stop partners in local areas in determining equitable and stable methods of funding the costs of infrastructure at one-stop centers based on proportionate benefits received, and consistent with Federal cost principles.

(b) The guidance must include:

(1) The appropriate roles of the one-stop partner programs in identifying one-stop infrastructure costs;

(2) Approaches to facilitate equitable and efficient cost allocation that results in a reasonable cost allocation methodology where infrastructure costs are charged to each partner in proportion to relative benefits received, consistent with Federal cost principles; and

(3) The timelines regarding notification to the Governor for not reaching local agreement and triggering the State-funded infrastructure mechanism described in § 463.730, and timelines for a one-stop partner to submit an appeal in the State-funded infrastructure mechanism.

<u>§ 463.710 How are infrastructure costs funded</u>?

Infrastructure costs are funded either through the local funding mechanism described in § 463.715 or through the State funding mechanism described in § 463.730.

<u>§ 463.715 How are one-stop infrastructure costs funded in the local funding mechanism</u>?

(a) In the local funding mechanism, the Local Board, chief elected officials, and one-stop partners agree to amounts and methods of calculating amounts each partner will

contribute for one-stop infrastructure funding, include the infrastructure funding terms in the MOU, and sign the MOU. The local one-stop funding mechanism must meet all of the following requirements:

(1) The infrastructure costs are funded through cash and fairly evaluated in-kind partner contributions and include any funding from philanthropic organizations or other private entities, or through other alternative financing options, to provide a stable and equitable funding stream for ongoing one-stop delivery system operations;

(2) Contributions must be negotiated between one-stop partners, chief elected officials, and the Local Board and the amount to be contributed must be included in the MOU;

(3) The one-stop partner program's proportionate share of funding must be calculated in accordance with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200 based upon a reasonable cost allocation methodology whereby infrastructure costs are charged to each partner in proportion to relative benefits received, and must be allowable, reasonable, necessary, and allocable;

(4) Partner shares must be periodically reviewed and reconciled against actual costs incurred, and adjusted to ensure that actual costs charged to any one-stop partners are proportionate and equitable to the benefit received by the one-stop partners and their respective programs or activities.

(b) In developing the section of the MOU on one-stop infrastructure funding fully described in § 463.755, the Local Board and chief elected officials will:

(1) Ensure that the one-stop partners adhere to the guidance identified in § 463.705 on one-stop delivery system infrastructure costs.

(2) Work with one-stop partners to achieve consensus and informally mediate any possible conflicts or disagreements among one-stop partners.

(3) Provide technical assistance to new one-stop partners and local grant recipients to ensure that those entities are informed and knowledgeable of the elements contained in the MOU and the one-stop infrastructure costs arrangement.

(c) The MOU may include an interim infrastructure funding agreement, including as much detail as the Local Board has negotiated with one-stop partners, if all other parts of the MOU have been negotiated, in order to allow the partner programs to operate in the one-stop centers. The interim infrastructure agreement must be finalized within 6 months of when the MOU is signed. If the infrastructure interim infrastructure agreement is not finalized within that timeframe, the Local Board must notify the Governor, as described in § 463.725.

<u>§ 463.720 What funds are used to pay for infrastructure costs in the local one-stop infrastructure funding mechanism</u>?

(a) In the local one-stop infrastructure funding mechanism, one-stop partner programs can determine what funds they will use to fund infrastructure costs. The use of these funds must be in accordance with the requirements in this subpart, and with the relevant partner's authorizing statutes and regulations, including, for example, prohibitions against supplanting non-Federal resources, statutory limitations on administrative costs, and all other applicable legal requirements. In the case of partners administering adult education and literacy programs authorized by title II of WIOA or the

Carl D. Perkins Career and Technical Education Act of 2006, these funds may include Federal funds that are available for State administration of adult education and literacy programs authorized by title II of WIOA or for State administration of post-secondary level programs and activities under the Perkins Act, and non-Federal funds that the partners contribute to meet these programs' matching or maintenance of effort requirements. These funds also may include local administrative funds available to local entities or consortia of local entities that have been delegated authority to serve as one-stop local partners by a State eligible agency as permitted by §§ 463.415(b) and (e).

(b) There are no specific caps on the amount or percent of overall funding a one-stop partner may contribute to fund infrastructure costs under the local one-stop funding mechanism, except that contributions for administrative costs may not exceed the amount available for administrative costs under the authorizing statute of the partner program. However, amounts contributed for infrastructure costs must be allowable and based on proportionate use by or benefit to the partner program, taking into account the total cost of the one-stop infrastructure as well as alternate financing options, and must be consistent with 2 CFR chapter II, including the Federal cost principles.

<u>§ 463.725 What happens if consensus on infrastructure funding is not reached at the local level between the Local Board, chief elected officials, and one-stop partners</u>?

If, after July 1, 2016, and each subsequent July 1, the Local Board, chief elected officials, and one-stop partners do not reach consensus on methods of sufficiently funding local infrastructure through the local infrastructure cost funding mechanism, and include that consensus agreement in the signed MOU, then the Local Board must notify

the Governor and the Governor must administer funding through the State one-stop funding mechanism, as described in § 463.730. (WIOA sec. 121(h)(2))

§ 463.730 What is the State one-stop infrastructure funding mechanism?

(a) In the State one-stop infrastructure funding mechanism, the Governor, after consultation with the chief elected officials, Local Boards, and the State Board, determines one-stop partner contributions, based upon a methodology where infrastructure costs are charged to each partner in proportion to relative benefits received and consistent with the partner program's authorizing laws and regulations, 2 CFR chapter II, including the Federal cost principles, and other applicable legal requirements described in § 463.735(a).

(b) The State Board develops an allocation formula to allocate funds to local areas to support the infrastructure costs for local area one-stop centers for all local areas that did not use the local funding mechanism, and the Governor uses that formula to allocate the funds. This is described in detail in § 463.745.

§ 463.735 How are partner contributions determined in the State one-stop funding mechanism?

(a) In the State one-stop funding mechanism, the Governor, after consultation with State and Local Boards and chief elected officials, will determine the amount each partner must contribute to assist in paying the infrastructure costs of one-stop centers. The Governor must calculate amounts based on the proportionate use of the one-stop centers by each partner, consistent with chapter II of title 2, Code of Federal Regulations (or any corresponding similar regulation or ruling), taking into account the costs of administration of the one-stop delivery system for purposes not related to one-stop

centers for each partner such as costs associated with maintaining the Local Board, or information technology systems. The Governor will also take into account the statutory requirements for each partner program, all other applicable legal requirements, and the partner program's ability to fulfill such requirements.

(b) In certain situations, the Governor does not determine the infrastructure cost contributions for one-stop partner programs.

(1) The Governor will not determine the contribution amounts for infrastructure funds for Native American grantees described in 20 CFR part 684. (WIOA sec. 121(h)(2)(D)(iii).) The appropriate portion of funds to be provided by Native American grantees to pay for one-stop infrastructure must be determined as part of the development of the MOU described in § 463.500 and specified in that MOU.

(2) In a State in which the State constitution or a State statute places policy-making authority that is independent of the authority of the Governor in an entity or official with respect to the funds provided for adult education and literacy activities, post-secondary career and technical education activities, or vocational rehabilitation services, the chief officer of that entity or the official must determine the contribution amounts for infrastructure funds in consultation with the Governor. (WIOA sec. 121(h)(2)(C)(ii).)

(c) Limitations. Per WIOA sec. 122(h)(2)(D), the amount established by the Governor under paragraph (a) of this section may not exceed the following caps:

(1) WIOA Formula programs and employment service. The portion of funds required to be contributed under the WIOA youth, adult, or dislocated worker programs, or under the Wagner- Peyser Act (29 U.S.C. 49 et seq.) must not exceed 3 percent of the

amount of Federal funds provided to carry out that program in the State for a program year.

(2) Other one-stop partners. The portion of funds required to be contributed must not exceed 1.5 percent of the amount of Federal funds provided to carry out that education program or employment and training program in the State for a fiscal year. For purposes of Carl D. Perkins Career and Technical Education Act of 2006, the cap on contributions is determined based on the funds made available for State administration of post-secondary level programs and activities.

(3) Vocational rehabilitation. Within a State, the entity or entities administering the programs described in WIOA sec. 121(b)(1)(B)(iv) the allotment is based on the one State allotment, even in instances where that allotment is shared between two State agencies, and will not be required to provide from that program a cumulative portion that exceeds—

(i) 0.75 percent of the amount of Federal funds provided to carry out such program in the State for Fiscal Year 2016;

(ii) 1.0 percent of the amount provided to carry out such program in the State for Fiscal Year 2017;

(iii) 1.25 percent of the amount provided to carry out such program in the State for Fiscal Year 2018; and

(iv) 1.5 percent of the amount provided to carry out such program in the State for Fiscal Year 2019 and following years.

(4) Federal direct spending programs. For local areas that have not reached a one-stop infrastructure funding agreement by consensus, an entity administering a program

funded with direct spending as defined in sec. 250(c)(8) of the Balanced Budget and Emergency Deficit Control Act of 1985, as in effect on February 15, 2014 (2 U.S.C. 900(c)(8)), must not be required to provide more for infrastructure costs than the amount that the Governor determined (as described in § 463.735(a)).

(d) If the above limitations result in funding less than each partner's proportionate share and contribute to inadequate funding of the allocation amount determined under § 463.745(b), the Governor may direct the Local Board, chief elected officials, and one-stop partners to reenter negotiations to reduce the infrastructure costs to reflect the amount of funds that are available for such costs, discuss proportionate share of each one-stop partner, or to identify alternative sources of financing for one-stop infrastructure funding, but, in any event, a partner will only be required to pay an amount that is consistent with the proportionate benefit received by the partner, the program's authorizing laws and regulations, the Federal cost principles, and other applicable legal requirements.

(1) The Local Board, chief elected officials, and one-stop partners, after renegotiation, may come to agreement and sign an MOU and proceed under the local one-stop funding mechanism.

(2) If after renegotiation, agreement amongst partners still cannot be reached or alternate financing identified, the Governor may adjust the specified allocation, in accordance with the amounts available and the limitations described in § 463.735(c).

<u>§ 463.740 What funds are used to pay for infrastructure costs in the State one-stop infrastructure funding mechanism</u>?

(a) In the State one-stop infrastructure funding mechanism, infrastructure costs for WIOA title I programs, including Native American Programs described in 20 CFR part 684, can be paid using program funds, administrative funds, or both. Infrastructure costs for the Senior Community Service Employment Program under title V of the Older Americans Act (42 U.S.C. 3056 et seq.) can also be paid using program funds, administrative funds, or both. (WIOA sec. 121(h)(2)(D)(i)(II).)

(b) In the State one-stop infrastructure funding mechanism, infrastructure costs for other required one-stop partner programs (listed in §§ 463.400 through 463.410) are limited to the program's administrative funds, as appropriate. (WIOA sec. 121(h)(2)(D)(i)(I).)

(c) In the State one-stop infrastructure funding mechanism, infrastructure costs for the adult education program authorized by title II of WIOA must be paid from the funds that are available for State administration or from non-Federal funds that the partner contributes to meet the program's matching or maintenance of effort requirement. Infrastructure costs for title II of WIOA may also be paid from funds available for local administration of programs and activities to eligible providers or consortia of eligible providers delegated responsibilities to act as a local one-stop partner pursuant to § 463.415(b).

(d) In the State one-stop infrastructure funding mechanism, infrastructure costs for the Carl D. Perkins Career and Technical Education Act of 2006 must be paid from the Federal funds that are available for State administration of post-secondary level programs and activities under the Perkins Act, or from non-Federal funds that the partner contributes to meet the program's matching or maintenance of effort requirement.

Infrastructure costs for the Carl D. Perkins Career and Technical Education Act of 2006 may also be paid from funds available for local administration of post-secondary level programs and activities to eligible recipients or consortia of eligible recipients delegated responsibilities to act as a local one-stop partner pursuant to § 463.415(e).

§ 463.745 How is the allocation formula used by the Governor determined in the State one-stop funding mechanism?

(a) The State Board must develop an allocation formula to be used by the Governor to allocate funds to the local areas that did not successfully use the local funding mechanism. The allocation formula must take into account the number of one-stop centers in a local area, the population served by such centers, the services provided by such centers, and other factors relating to the performance of such centers that the State Board determines are appropriate and that are consistent with Federal cost principles. (WIOA 121(h)(3)(B))

(b) Using the funds contributed by the one-stop partners described in § 463.735, the Governor will then use this formula to allocate funds to the local areas that did not use the local funding mechanism to fund one-stop center infrastructure costs, so long as that funding distribution is consistent with Federal cost principles for each of the affected one-stop partners.

§ 463.750 When and how can a one-stop partner appeal a one-stop infrastructure amount designated by the State under the State infrastructure funding mechanism?

(a) The Governor must establish a process, described under sec. 121(h)(2)(E) of WIOA, for a one-stop partner administering a program described in §§ 463.400 through 463.410 to appeal the Governor's determination regarding the one-stop partner's portion

of funds to be provided for one-stop infrastructure costs. This appeal process must be described in the Unified State Plan. (WIOA secs. 121(h)(2)(E) and 102(b)(2)(D)(i)(IV).)

(b) The appeal may be made on the ground that the Governor's determination is inconsistent with proportionate share requirements in § 463.735(a), the cost contribution limitations in § 463.735(b), or the cost contribution caps in § 463.735(c).

(c) The process must ensure prompt resolution of the appeal in order to ensure the funds are distributed in a timely manner, consistent with the requirements of § 683.630 of this chapter.

(d) The one-stop partner must submit an appeal in accordance with State's deadlines for appeals specified in the guidance issued under § 463.705(b)(3), or if the State has not set a deadline, within 21 days from the Governor's determination.

<u>§ 463.755 What are the required elements regarding infrastructure funding that must be included in the one-stop Memorandum of Understanding</u>?

The MOU, fully described in § 463.500, must contain the following information whether the local areas use either the local one-stop or the State one-stop infrastructure funding method:

(a) The period of time in which this infrastructure funding agreement is effective. This may be a different time period than the duration of the MOU.

(b) Identification of an infrastructure and shared services budget that will be periodically reconciled against actual costs incurred and adjusted accordingly to ensure that it reflects a cost allocation methodology that demonstrates how infrastructure costs are charged to each partner in proportion to relative benefits received, and that complies

with chapter II of title 2 of the Code of Federal Regulations (or any corresponding similar regulation or ruling).

(c) Identification of all one-stop partners, chief elected officials, and Local Board participating in the infrastructure funding arrangement.

(d) Steps the Local Board, chief elected officials, and one-stop partners used to reach consensus or an assurance that the local area followed the guidance for the State one-stop infrastructure funding process.

(e) Description of the process to be used between partners to resolve issues during the MOU duration period when consensus cannot be reached.

(f) Description of the periodic modification and review process to ensure equitable benefit among one-stop partners.

§ 463.760 How do one-stop partners jointly fund other shared costs under the Memorandum of Understanding?

(a) In addition to jointly funding infrastructure costs, one-stop partners listed in §§ 463.400 through 463.410 must use a portion of funds made available under their programs' authorizing Federal law (or fairly evaluated in-kind contributions) to pay the additional costs relating to the operation of the one-stop delivery system, which must include applicable career services.

(b) Additionally, one-stop partners may jointly fund shared services to the extent consistent with their programs' Federal authorizing statutes and other applicable legal requirements. Shared services' costs may include the costs of shared services that are authorized for and may be commonly provided through the one-stop partner programs to any individual, such as initial intake, assessment of needs, appraisal of basic skills,

identification of appropriate services to meet such needs, referrals to other one-stop partners, and business services. Shared operating costs may also include shared costs of the Local Board's functions.

(c) These shared costs must be allocated according to the proportion of benefit received by each of the partners, consistent with the Federal law authorizing the partner's program, and consistent with all other applicable legal requirements, including Federal cost principles in chapter II of title 2 of the Code of Federal Regulations (or any corresponding similar regulation or ruling) requiring that costs are reasonable, necessary, and allocable.

(d) Any shared costs agreed upon by the one-stop partners must be included in the MOU.

<u>§ 463.800 How are one-stop centers and one-stop delivery systems certified for effectiveness, physical and programmatic accessibility, and continuous improvement</u>?

(a) The State Board, in consultation with chief elected officials and Local Boards, must establish objective criteria and procedures for Local Boards to use when certifying one-stop centers.

(1) The State Board must review and update the criteria every 2 years as part of the review and modification of State Plans pursuant to § 463.135.

(2) The criteria must be consistent with the Governor's and State Board's guidelines, guidance and policies on infrastructure funding decisions, described in § 463.705. The criteria must evaluate the one-stop centers and one-stop delivery system for effectiveness, including customer satisfaction, physical and programmatic accessibility, and continuous improvement.

(3) When the Local Board is the one-stop operator as described in § 679.410 of this chapter, the State Board must certify the one-stop center.

(b) Evaluations of effectiveness must include how well the one-stop center integrates available services for participants and businesses, meets the workforce development needs of participants and the employment needs of local employers, operates in a cost-efficient manner, coordinates services among the one-stop partner programs, and provides maximum access to partner program services even outside regular business hours. These evaluations must take into account feedback from one-stop customers. They must also include evaluations of how well the one-stop center ensures equal opportunity for individuals with disabilities to participate in or benefit from one-stop center services. These evaluations must include criteria evaluating how well the centers and delivery systems take actions to comply with the disability-related regulations implementing WIOA sec. 188, set forth at 29 CFR part 37. Such actions include, but are not limited to:

(1) Providing reasonable accommodations for individuals with disabilities;

(2) Making reasonable modifications to policies, practices, and procedures where necessary to avoid discrimination against persons with disabilities;

(3) Administering programs in the most integrated setting appropriate;

(4) Communicating with persons with disabilities as effectively as with others; and

(5) Providing appropriate auxiliary aids and services, including assistive technology devices and services, where necessary to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, the program or activity.

(c) Evaluations of continuous improvement must include how well the one-stop center supports the achievement of the negotiated local levels of performance for the indicators of performance for the local area described in sec. 116(b)(2) of WIOA and 20 CFR part 677. Other continuous improvement factors may include a regular process for identifying and responding to technical assistance needs, a regular system of continuing professional staff development, and having systems in place to capture and respond to specific customer feedback.

(d) Local Boards must assess at least once every 3 years the effectiveness, physical and programmatic accessibility, and continuous improvement of one-stop centers and the one-stop delivery systems using the criteria and procedures developed by the State Board. The Local Board may establish additional criteria, or set higher standards for service coordination, than those set by the State criteria. Local Boards must review and update the criteria every 2 years as part of the Local Plan update process described in § 463.580. Local Boards must certify one-stop centers in order to be eligible to receive infrastructure funds in the State infrastructure funding mechanism described in § 463.730.

(e) All one-stop centers must comply with applicable physical accessibility requirements, as set forth in 29 CFR part 37.

<u>§ 463.900 What is the common identifier to be used by each one-stop delivery system</u>?

(a) The common one-stop delivery system identifier is "American Job Center."

(b) As of July 1, 2016, each one-stop delivery system must include the "American Job Center" identifier or "a proud partner of the American Job Center

network" on all products, programs, activities, services, facilities, and related property and materials used in the one-stop system.

(c) One-stop partners, States or local areas may use additional identifiers on their products, programs, activities, services, facilities, and related property and materials.

_____

Thomas E. Perez,

Secretary of Labor.

_____

Arne Duncan,

Secretary of Education.

Billing Code: 4000-01-U (Education – 66%)

4510-FN-P (Labor – 22%)

4510-FT-P (Labor – 12%)

[FR Doc. 2015-05528 Filed: 4/2/2015 04:15 pm; Publication Date: 4/16/2015]