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

Lekesha Campbell  
U.S. Department of Education  
400 Maryland Avenue, S.W., Room 11-008  
Potomac Center Plaza (PCP)  
Washington, DC 2002-7240

**Re: [Docket No. ETA-2015-0002] RIN 1205-AB74, 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**

The Center for Law and Social Policy (CLASP) submits these comments pursuant to the Notice of Proposed Rulemaking (NPRM) that was published in the Federal Register, Vol. 80, No. 73, on Thursday, April 16, 2015.

CLASP advocates for public policies that reduce poverty, improve the lives of poor people, and create ladders to economic security for all, regardless of race, gender, or geography. We target large-scale opportunities to reform federal and state programs, funding, and service systems, then work on the ground for effective implementation. Our research, analysis, and advocacy foster new ideas and position governments and advocates to better serve low-income people. We also work at the state and local level, providing technical assistance regarding the implementation of federal policies and programs.

CLASP sincerely thanks the Department of Education and the Department of Labor for their hard work in producing this proposed regulation jointly. The Departments' close collaboration at the federal level around the important issues of planning, performance, and the one-stop system helps set the stage for coordination across programs and systems at all levels of government that can benefit low-income people.

The statewide planning process contemplated by the Workforce Innovation and Opportunity Act (WIOA) offers states an important opportunity to align programs, coordinate policies, and braid and blend funding sources to support the types of comprehensive and integrated education, training, employment services, and support services that are essential to help low-skilled and low-income individuals succeed in the workforce. The proposed regulations regarding the Unified and Combined State Planning processes largely incorporate by reference the planning elements required in the WIOA statute, with many important details to be included in forthcoming planning guidance. To achieve the potential of WIOA planning to transform the workforce system to deliver better, more integrated services with an increased focus on low-income and lower-skilled youth and adults, we recommend in our comments that the Departments add five required elements for state plans in the final regulations: priority of service, career pathways, criteria for selecting employers for work-based training, youth committees, and measurable skill gains.

WIOA incorporates important changes to the performance management policy, most notably the expansion of common measures to encompass each of the core programs, but also through the creation of new measures such as the measureable skill gains indicator. We commend the Departments for using the NPRM to build on this statutory framework to continue to move the workforce system toward greater levels of shared accountability among workforce programs. The performance management provisions of WIOA have been the subject of intense attention and concern by the field, and by CLASP's stakeholders, for good reason. A well-designed performance management system has the potential to dramatically improve results for low-income, lower-skilled youth and adults by encouraging integrated service delivery, including co-enrollment across core programs and support for longer-term and more intensive interventions such as career pathways. However, the performance management system also has the potential to create disincentives for integration of services, and it can erect barriers to service for those individuals who need more extensive help. CLASP's comments are driven by our desire to create and expand incentives for service integration wherever possible, and to reduce or eliminate any disincentives. We applaud the Departments' commitment to a consultative process for this critical policy area, and we look forward to working with the Departments as WIOA performance management policy continues to take shape.

CLASP has long-developed expertise on human services policies and practices at the federal, state, and local levels. We use that perspective to offer comments to amend the proposed regulations to maximize the potential benefits of the Combined State Planning process for beneficiaries of human services programs and other individuals with barriers to employment, and we make further recommendations to address issues related to the inclusion of TANF as a required one-stop partner. CLASP believes it is valuable for TANF and other human services programs to be included in an overall workforce vision and to benefit from labor market information in setting policy. However, such partnerships should be assessed by whether they further the goal of providing low-income individuals, particularly those with significant barriers to employment, with high-quality workforce services.

In addition to the comments below, CLASP also submitted [comments](#) on the Title II proposed regulation [RIN 1830-AA22] and [comments](#) on the Title I proposed regulation [RIN 1205-AB73]. In all of our responses, we note our appreciation for the Departments' attention to career pathways in each of the three NPRMs. Career pathway strategies have proven effective in serving lower-skill, low-income people through integrative educational approaches and robust career services. CLASP strongly supports the inclusion of shared performance metrics, co-enrollment, integrated education and training and other career pathway essentials. However, CLASP also urges the Departments to include additional operational regulations to support practitioners who are implementing career pathway strategies.

What follows below are comments to [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; Proposed Rule](#), focused on proposed rules relating to 20 CFR Parts 676, 677, and 678 (Employment and Training Administration) and 34 CFR Parts 361 and 463 (Department of Education).

For questions about Unified and Combined Planning and the One-Stop System Joint Provisions, please contact David Socolow, Director, Center for Postsecondary and Economic Success at CLASP, [dsocolow@clasp.org](mailto:dsocolow@clasp.org). For questions regarding Performance Accountability, please contact Anna Cielinski, [acielinski@clasp.org](mailto:acielinski@clasp.org).

## **Part 676—Unified and Combined State Plans Under Title I of the Workforce Innovation and Opportunity Act**

**§676.105 What are the general requirements for the Unified State Plan?** *(Note: these comments also apply to the identical corresponding sections under 34 CFR Part 361 and 463)*

CLASP strongly supports the provisions of the law that require states to submit Unified State Plans to foster greater coordination among the six core workforce and education programs funded under WIOA. By requiring four-year Unified State Plans, the law sends an important signal to the core programs authorized by Titles I through IV of WIOA, encouraging these programs to work together, rather than in silos. Increased coordination among WIOA’s core programs can help to align policies and funding streams to support comprehensive and integrated services that help low-skilled and low-income people—including disconnected youth, recipients of public assistance, formerly incarcerated individuals, and others with unique barriers to employment—get the education, training, employment services, and support services they need to enter and advance in the workforce. Coordination is essential to providing such services concurrently and over time as people’s needs and situations change. Unified planning is also crucial to support career pathways, which inherently require cross-program coordination.

To enable this vision of WIOA to be achieved, CLASP urges the Departments in the final rule to add several additional required operational elements to the list of requirements for Unified State Plans in §676.105(d). The proposed regulation incorporates by reference the required plan elements enumerated in the WIOA statute, and notes, pursuant to the Departments’ authority under WIOA Section 102(b)(2)(C)(viii) to require other “additional planning elements” that the Secretaries of Education and Labor “determine are necessary,” that there will be “additional explanations and clarifications of assurances and plan requirements” in forthcoming “joint planning guidance” from the Departments. CLASP recommends that the Departments require states to address the following five topics as required Unified State Plan elements, both in the forthcoming planning guidance and codified in the final regulations:

1. Priority of Service
2. Career Pathways
3. Criteria for Selecting Employers for Work-based Training
4. Youth Committees
5. Measurable Skill Gains

### **Priority of Service**

CLASP recommends a requirement that the Unified State Plan include a description of how the Governor will ensure priority of service for Title I Adult career and training services to recipients of public

assistance, other low-income individuals, and individuals who are basic skills deficient, consistent with WIOA Section 134(c)(3)(E) and proposed §680.600. Proposed §679.560(b)(21) of the WIOA Title I Notice of Proposed Rulemaking (Docket No. ETA–2015–0001/RIN 1205–AB73) explicitly requires local plans to include a description of how the one-stop operator will be directed by *both* the Governor *and* the local board to implement priority of service for recipients of public assistance, other low-income individuals, and individuals who are basic skills deficient. To enable local boards to have a complete understanding of the Governor’s direction on this important provision of the law, and to assist the local boards in documenting the Governor’s direction as a required element in their local plan, the Departments should add a corresponding element to the requirements for Unified State Plans.

### **Career Pathways**

Unified State Plans should explain how they will apply the WIOA definition of a Career Pathway to programs in their state. While state and local boards are mandated to convene their education partners to develop and implement career pathways, there are currently no proposed regulations to ensure that these pathways fit the criteria in the law’s career pathway definition, WIOA *Section 3(7)(a-g)*. For example, what does “accelerated” mean? How is “contextualized” to be gauged?

The Departments should require that Unified State Plans include a career pathway approval process that requires local plans to describe how their programs meet the WIOA statutory definition of career pathways that: a) align with industries in the regional economy; b) include secondary and postsecondary education; c) include individual education and career counseling; d) include integrated education and training; e) are organized for acceleration; f) include high school equivalency and at least one postsecondary credential; and, g) include career advancement. State Plans should include an explanation of how local plans would detail their career pathways according to these criteria. In addition, the final regulations should define “high-quality education, training, and other services” as those that not only achieve the WIOA performance metrics but also do so through effective practices established by the state career pathway leadership team and codified in the Eligible Training Provider approval process.

CLASP recommends that Unified State Plans be required to demonstrate how to track career pathway participants whose service happens not within one particular federal program and funding stream but across these programs through co-enrollment. The required elements for the Unified State Plan should specify the need to identify co-enrolled participants across the WIOA titles and in the Career and Technical Education (CTE) and human service partner systems. Unified State Plans should illustrate roles for CTE partners in development and implementation of career pathways, including strategies for co-enrollment. CTE partners are essential to comprehensive career pathways, and Unified State Plans should illustrate how the “required partner” status can best support individuals in accessing education and training along with career services. The final regulations should also provide guidance to Title I and Title II providers on working with CTE in the design and implementation of career pathways, and should promote shared decision making, with training funds through Title I, Title II, and CTE designing pathways together. Unified State Plans should also be required to address strategies for serving TANF

recipients through career pathway programming, as part of the Plan’s description of how career pathway services will be provided to adults, youth, and individuals with barriers to employment.

### **Criteria for Selecting Employers for Work-based Training**

Proposed § 680.730 and § 680.810, the sections of the WIOA Title I proposed regulations governing employer selection criteria for on-the-job training (OJT) and incumbent worker training (IWT), respectively, outline the criteria or factors that may be taken into account in selecting an employer to receive expanded OJT reimbursements or IWT grants to train the employer’s newly hired or existing workers. These criteria include potential factors such as post-training increases in the “wages and benefit levels of employees,” and other factors the Governor or local workforce board determines to be appropriate. To highlight this opportunity for states and local areas to connect workforce development to initiatives that improve job quality for many of the front-line jobs for which lower-skilled individuals are trained, CLASP urges the Departments to require states to list the criteria they will use for selecting employers as an operational element of the Unified State Plan, and to ensure that local plans in their state similarly describe their criteria for selecting employers. States and local workforce boards should be encouraged to use these criteria to target OJT and IWT grants to high-road employers, leveraging these public investments for work-based training partnerships that not only enable workers to earn while they learn but also promote improved job quality, by setting criteria that target awards of OJT and IWT training grants to employers that offer decent wages and benefits, invest in and support their employees’ ongoing training and advancement, and provide paid leave and predictable hourly schedules that enable workers to balance work with family caregiving and other commitments.

### **Youth Committees**

Consistent with CLASP’s comments on § 681.120 in the WIOA Title I Notice of Proposed Rulemaking (Docket No. ETA–2015–0001/RIN 1205–AB73), we recommend that the Departments add a required element of Unified State Plans to explain how local areas will be directed regarding their election to establish a youth committee. WIOA requires substantial change to the local youth system, including a dramatic shift in service to out-of-school youth, a greatly expanded age range and an increase in the number of program elements. Such dramatic changes will require strategic planning and coordination to achieve the legislative intent. Thus, in addition to the list of possible roles that standing youth committees might play, which is provided in the proposed rule, we would encourage the Departments to ensure that local boards and/or their standing youth committees also identify how they will address the following issues:

- i. How the local board will facilitate co-enrollment of participants across core programs – of particular importance for youth and young adults ages 18-24 who can be served through Title I, Title II, and Title IV.
- ii. How the local board will implement specific provisions related to career pathways, such as the requirement that local areas use youth funds to conduct an objective assessment “for the purpose of identifying appropriate services and career pathways for participants,” and broader career pathways for youth and young adults across core programs.

- iii. How the procurement processes and requests for proposals will be adapted and aligned across the core programs, when possible, to encourage longer-term and more intensive services for out-of-school youth.
- iv. How connections will be made with Temporary Assistance for Needy Families (TANF) partners at one-stops to ensure policy and programmatic alignment for the young adult population under 25, who may receive a different set of services if they are not served through Title I Youth. This is important because a large percentage of the TANF recipients are under 25 and would benefit from out-of-school youth programs, but there are varying federal requirements and outcomes for the two programs. WIOA and TANF differ greatly from each other, so specific “policy and programmatic alignment” will be required on the part of state and local workforce boards in order to effectively serve TANF recipients in a WIOA program.

### **Measurable Skill Gains**

To ensure effective implementation of the measurable skill gains indicator, CLASP recommends that Unified State Plans be required to ensure that local plans include: 1) a process describing how they will use the measurable skill gains indicator based on their service delivery strategies across programs, and 2) a list of the measurable skill gains that they will be utilizing in the coming year, as discussed further in our comments on proposed §679.560(b)(16). The local plan requirement should start with the illustrative list of potential skill gains in proposed §677.155(a)(1)(v), and allow local areas to add other measurable skill gains related to a program or series of programs. States should ensure that, when calculating measurable skill gains in their performance reports, local areas use only the documented interim progress measures that were included in the local plan. The local plan should also include any assessments that will be used to measure gains where appropriate and feasible. The goal of this recommended clarification is to give local areas the flexibility to use measurable skill gains in their existing or innovative program designs, while ensuring that there is a complete and defined list of possible skill gains for a local area, so that the measure is not inappropriately over-used. Please see CLASP’s extensive comments below on §677.155(a)(1)(v) regarding the measurable skill gains indicator.

### **§676.130(c) What is the submission and approval process of the Unified State Plan?**

CLASP applauds the Departments for their interpretation of the Sunshine Provision of the WIOA law in this section of the proposed regulations. We believe the proposed regulation would promote the principles of transparency and open public comment throughout the drafting and development process for the Unified State Plan. In addition, we support the proposed regulation’s requirement that states provide a meaningful opportunity for public comment on the Unified State Plan by stakeholders such as 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. CLASP recommends that, in addition to the proposed list of categories of stakeholders in proposed § 676.130(c)(1), the Departments should explicitly include other categories of required stakeholders, specifically, state and local human services agencies and low-income and disadvantaged people. In light of the emphasis within WIOA of more robust cross-agency alignment

and partnerships, and the law's increased focus on services to individuals with barriers to employment, it is essential to include such individuals themselves, and human services agencies that are familiar with their needs, on the list of stakeholders from whom states must seek comment on the Unified State Plan.

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

One way that WIOA promotes cross-program coordination is by offering states the option to submit a Combined State Plan, in lieu of the Unified State Plan, to align and coordinate WIOA's six core programs with one or more additional federally funded programs that include workforce development. As specified in WIOA, the proposed regulations list the other federal programs that could coordinate with WIOA through inclusion in a Combined State Plan, including Career and Technical Education programs funded by the Carl D. Perkins Act at both secondary and postsecondary institutions, as well as employment and training services provided by TANF program; the Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T) program; Trade Adjustment Assistance (TAA); Job Counseling, Training, and Placement Services for Veterans (VETS); state Unemployment Insurance (UI) programs; Senior Community Service Employment programs under the Older Americans Act (SCSEP); the Department of Housing and Urban Development; the Community Services Block Grant; or the Second Chance Act for reintegration of ex-offenders (proposed §676.140(d)(1)-(11)).

CLASP thanks the Departments for the reinforcement in the preamble that states are "strongly encouraged" to submit a Combined State Plan "to expand the benefits of cross-program strategic planning, increase alignment among State programs, and increase service integration." We believe that robust engagement by human services agencies in combined planning with workforce development and education partners can be beneficial to the participants in programs such as TANF and SNAP E&T. The employment and training components of these programs would be improved by closer coordination with the specific labor market information used in workforce planning, which human services programs can use to drive better decisions, more accurately target training for demand occupations, and implement effective cross-program workforce service strategies for TANF and SNAP E&T recipients, including continuity of services when participants leave benefit programs. In addition, the transparent process for drafting and developing plans required in proposed §676.130(c) would provide important opportunities for public comment on Combined State Plans, which would enable low-income individuals and their advocates to have their voice heard in workforce planning decisions. Regardless of whether a state chooses to submit a Combined State Plan, engaging human services agencies in the planning process can help generate innovative, cross-program approaches that align policies and funding streams to support integrated, comprehensive services that help low-skilled and low-income people—including disconnected youth, public assistance recipients, and others with unique barriers to employment—get the education, training, employment services, and support services they need to enter and advance in the workforce.

CLASP urges the Departments to include a clarification in the final regulations to correct a common confusion about WIOA among stakeholders of the TANF program, distinguishing between the state's choice of whether to include TANF in a Combined State Plan and the Governor's decision regarding making TANF a required partner in the one-stop system. CLASP urges the Departments to explicitly state

that the Governor’s option to determine that TANF will not be a required one-stop partner in a state is a separate and distinct decision from the option of including TANF in a Combined State Plan.

The Departments also specifically requested comment on how to reduce the federal paperwork burden on non-WIOA programs that are included in a Combined State Plan, when those programs have planning and federal reporting cycles at intervals that are out of sync with the four-year planning cycle for WIOA core programs (with a two-year plan review at the midpoint of the four-year cycle). CLASP suggests that the bifurcated nature of the WIOA State Plans – with both strategic and operational elements – could be adapted to allow non-WIOA programs to participate in the strategic portion of the planning process, even if they cannot fully align their budgets and operational plans with a two- or four-year operational plan. For instance, state SNAP programs, which must submit annual plans and budgets to the U.S. Department of Agriculture, at a minimum should be encouraged to participate in the strategic component of a Combined State Plan, even if the state SNAP E&T program would be unable to make two- or four-year commitments on budget and operational matters.

### **Part 677—Performance Accountability Under Title I of the Workforce Innovation and Opportunity Act**

#### **§677.150 What definitions apply to Workforce Innovation and Opportunity Act performance measurement and reporting requirements?**

The definitions distinguish between “participants” (who are counted in performance measures) and “reportable individuals” (who are not counted in performance measures). CLASP supports this distinction because it allows for appropriate initial activities prior to meaningful engagement in a core program.

The rules governing the definitions of “participant” and “exit” are very important because they set the parameters about who counts, who does not count, and when they count for performance measurement. CLASP’s comments on these issues are driven, in part, by our belief that the co-enrollment rightfully encouraged in the draft regulations can support more comprehensive services for participants and improve outcomes, especially for lower-skilled and low-income adults and youth, many of whom have multiple barriers to employment. Care must be taken to create specific incentives for co-enrollment through performance management.

Co-enrollment, or concurrent enrollment, while not defined in the Joint ED/DOL NPRM that these comments are addressing, is discussed in the Title II NPRM [RIN 1830-AA22].

*The proposed definition of “concurrent enrollment” or “co-enrollment” would clarify its meaning specific to enrollment in two or more of the four core programs in WIOA to provide consistency with how it is used throughout the statute. This definition, developed for the purposes of WIOA, differs from the general use of the term which implies enrollment in two or more education programs.*



Unfortunately, many disincentives for co-enrollment still exist, including differences in cross-program performance definitions and measures and uncertainty about how to report performance outcomes for co-enrolled participants, leading to concerns that programs may not get credit for positive outcomes to which they contributed.

Overall, CLASP urges that the final regulations should make clear that outcomes for co-enrolled individuals should count for each program in which the participant is enrolled. The Departments should jointly reinforce this in guidance and other communication with the field. Additional recommendations are found below in our discussions of the definitions of “participant” and “exit.”

### **§677.150(a) Participant**

According to the proposed rule, a participant is “a reportable individual who has received staff-assisted services after satisfying applicable programmatic requirements for the provision of services, such as eligibility determination.” The two exceptions are for Vocational Rehabilitation (VR), where a participant is an individual who has an individualized Plan for Employment and has begun to receive services, and for Adult Education and Family Literacy Act (AEFLA) programs, where a participant has completed at least 12 contact hours.

Title I Youth is not explicitly mentioned in 677.150(a). However, the preamble states that “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.”

CLASP notes that receiving an assessment under the proposed rule could be (but should not be) considered a staff-assisted service, which puts the definition in the rule in conflict with the general definition in the preamble. To remedy this, CLASP urges the Departments to explicitly include the concept from the preamble’s definition, but without the term, “(a staff-assisted service),” so that the final regulation would read:

*For WIOA youth, a participant is a reportable individual who is determined eligible, received an assessment, and received a program element.*

We recommend removing “a staff-assisted service” for Title I Youth because it is not defined in the statute or regulations and can be misleading when providing needed upfront navigation, assessment, and counseling services to youth.

In this context “received a program element” we believe that the Departments are likely referring to the beginning of participation in a program element, not that the program element has been completed. We agree with this reading.

Including this definition in the final rule is important because it clarifies that local areas are allowed to begin collecting information, providing assessment activities and other efforts—such as referring age-

appropriate youth to access self-service through the one-stop system—before participant status is triggered.

In the specific case where youth age 18-24 are co-enrolled in Title I Youth and another core program, we suggest that the above definition of participant be used in both the youth program and the other co-enrolled program(s), to provide consistency, especially as it relates to when participation starts and who will be included in performance reporting. This inconsistency in performance measures across WIOA core programs is a good example of the barriers to co-enrollment and cross-system alignment that the Department of Labor has sought to address through the [Performance Partnership Pilots for Disconnected Youth](#), and the option for flexibility might be usefully employed in this instance, as well. We encourage the Departments to allow local areas to seek a federal waiver in order to resolve the issue of the funding streams having different performance expectations for the exact same population. Such a policy would be in keeping with the statute and draft regulation's spirit of encouraging co-enrollment strategies to expand the range of services to out-of-school youth and provides consistency about when participation starts and who will be included in performance.

With regard to all programs, CLASP urges the Departments to clarify that receiving an assessment does not make a reportable individual a participant for any program. If it did trigger participation, there would be inappropriate disincentives to providing needed assessments to reportable individuals. CLASP believes that participant status should not be triggered by receiving an assessment. In our view, it is inappropriate and inconsistent with effective practice to attach a person to a program for accountability purposes prior to knowledge of the person's service needs and the person's acceptance of their plan of service.

### **§677.150(c) Exit**

For all programs except Vocational Rehabilitation, the Departments propose defining “exit” as the last date of service, meaning that the individual has not received any services for 90 days and there are no future services planned. For this definition, “service” does not include self-service, information-only activities, or follow-up services. CLASP appreciates the Departments' efforts to use one consistent definition, because this common measurement context can promote shared accountability.

CLASP is also pleased that exit cannot be triggered if future services are planned. This could be used to support longer, planned interventions like youth programs with multiple components or career pathways with on ramps and off ramps to employment and training. Programs should be able to flag in their records that future services are planned.

In some cases, youth who were receiving services will stop receiving services due to life events, such as pregnancy; family hardships, such as the illness of a parent or child; or personal setbacks, such as incarceration, among other reasons. If these events are documented in their record and the participants are expected to return and continue their plan of service, we suggest that a hold status should be available to stop the exit “clock” until the participant is able to resume services. It should be a part of state monitoring to look at who is on hold, and for what reasons, to ensure that the hold provision is not being used inappropriately to delay exit and impact performance measurement.

With regard to the common 90-day threshold for determining exit, CLASP suggests that the Departments consider extending this threshold to 120 days. Since the first earnings measure is now at the second quarter after exit, extending to 120 days gives programs greater opportunity before measurement to recover those who have left training. In addition, for a variety of reasons, out-of-school youth often cycle in and out of services before getting on a consistent track to completing services and may be inactive for longer than three months before being reengaged.

### **Common Exit**

The Departments have considered a common exit-based definition that requires an individual to have completed all programs to officially exit from the system. In most cases, CLASP strongly supports the concept of a common exit, or cross-program exit. Such an approach will facilitate co-enrollment and career pathways, strategies that are important for low-income, lower-skilled individuals. Common exit and co-enrollment should also increase both access and comprehensive service delivery that results in sustained employability for youth. Measuring events in the same way is also a step toward greater shared accountability.<sup>1</sup>

For these reasons, CLASP recommends that the Departments consider a cross-program definition of exit that is available, but not required, in situations where:

- 1) Services are being provided through multiple programs under a plan of service, and
- 2) Procedures are in place to provide information on participants who are receiving services under multiple programs and on the status of those services.

However, in the specific case of co-enrollment with Title I Youth, a cross-program exit may not be desirable. Applying common exits could have unintended consequences in the performance system as it relates to the WIOA Title I Youth funding stream. In the case of out-of-school youth, for example, a service delivery strategy that uses WIOA Title II funds and Title I Youth funds to deliver participants to high school equivalency and sequence them to longer term postsecondary training is a powerful strategy and should be encouraged. However, the WIOA Title I Youth program has two different performance measures than the other core programs:

- (I) 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;
- (II) the percentage of program participants who are in education or training activities, or in unsubsidized employment, during the fourth quarter after exit from the program;

Given these outcome definitions for Title I Youth, participants may achieve a positive outcome by sustained enrollment in an educational program following completion of their Title I Youth-funded services, whereas continued participation in Title II or Title I Adult services would be needed under these circumstances in order to facilitate training program completion and placement into employment. The Title I Youth provider under this scenario might lose the opportunity to record a successful result under

the expanded definition of success for these two measures, if cross-program exit is imposed. Thus, the WIOA Youth program would not always benefit from using common exit in the performance system. This is one reason why we believe common exit should be available, but not required, under the circumstances laid out above.

## **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?**

#### **§677.155(a)(1)(i) Employment rate in the second quarter after exit**

The first indicator is the percentage of participants in unsubsidized employment in the second quarter after exit from the program, in other words an “employment rate.” CLASP strongly supports 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 all participants who were unemployed at the time of program entry, as was collected under the Workforce Investment Act (WIA). The entered employment rate is particularly important in Title I Youth programs, because these participants tend not to be employed when entering the program. However, we do not support the entered employment rate becoming an additional indicator for which goals are set.

### **Job Quality**

Because the new measure of employment includes those who were employed at entry, the Departments requested comments about whether and how to collect information on job quality to show how WIOA programs helped employed individuals find better jobs. As a long-time advocate for higher-quality jobs for low-income people, CLASP strongly supports collecting information on job quality, in addition to the measurement of median earnings. Low-quality jobs have high turnover rates. Documenting the job quality of employment placements for participants who were employed at program entry would inform stakeholders about the number of placements into jobs lacking benefits or workplace protections—the types of jobs that participants are unlikely to retain, leading to churn and the potential waste of WIOA resources. The availability of this information would benefit WIOA programs by enabling them to work with employers that are taking the “high road” and to assist employers in upgrading the quality of the entry-level jobs they offer.

CLASP suggests that the Departments collect information to measure job quality for these employment outcomes, which can shed light on some of the greatest causes of instability in the low-wage workplace, such as whether the job placement includes:

- Access to paid sick days (including uses and number of days, part-time worker access)
- Access to paid family leave (including uses and length of time, part-time worker access)
- Access to paid medical leave or short-term disability leave (including uses and length of time, part-time worker access)
- Advance notification of job schedules (number of days/weeks)

- Schedule stability (percentage fluctuation in weekly hours)
- On-call practices (are workers on-call, are they compensated if not called in?)
- Reporting time pay (are workers paid for their shift or some portion of their shift if sent home early?)
- Worker input into schedules
- Part-time work
- Temporary and subcontracted work

Because there are few publicly available data sources on job quality at the employer level, CLASP suggests that the Departments require programs to collect the information directly from employers and/or employees. We understand that this may increase burden on programs and employers, but we believe that the benefits would outweigh the costs. The Department of Labor’s Bureau of Labor Statistics tracks the national averages for some (but not all) of the metrics listed above; these existing survey data may be used to create benchmarks or compare WIOA employers to national averages. The Departments could consider having programs collect data from employers, in the least burdensome manner possible, while still ensuring detailed and accurate information is collected. In addition, the Department should consider having programs collect data from workers who have gained employment with these employers through WIOA.

#### **§677.155(a)(1)(ii) Employment rate during fourth quarter after exit**

The second indicator is the percentage of program participants who are in unsubsidized employment during the fourth quarter after exit. This “employment rate” differs from the “retained employment rate” collected under WIA. The advantage of collecting or reporting the retention rate is that the Departments could compare performance under WIOA with performance under WIA, but we do not believe it is necessary. Instead, CLASP suggests disaggregating the results by employment status at entry, as the Departments have proposed for the second quarter employment indicator.

#### **§677.155(a)(1)(iii) Median earnings during second quarter after exit**

This indicator measures median earnings in the second quarter after participants exit from the program. States must report the median point for earnings of all program participants in unsubsidized employment in the second quarter after exit.

The earnings measure is new for Title I Youth, Title II, and Title IV. For Title I Youth in particular, the WIOA statute and the proposed regulations encourage placement upon exit in postsecondary education. Each of the programs other than Title III address credential attainment, including credentials attained within one year after exit. Since those placed upon exit in education and training will most likely work only part-time, if at all, their inclusion in the median wage measure will negatively impact performance on this measure. Thus, we suggest that if a youth or adult is documented as enrolled in postsecondary education or training at the time the measurement is taken, that individual should not be included in the earnings metric.

### **§677.155(a)(1)(iv) Credential attainment rate**

The fourth indicator measures postsecondary credential attainment and high school completion of program participants during participation in the program or within one year after exit. The proposed regulation defines this measure with the statutory language, including the limitation that high school diplomas or equivalent will not count unless the participant is employed or in education or training within one year after exit from the program.

CLASP agrees that the Departments should clarify this language because we have heard substantial misunderstanding about this provision from stakeholders in the Title I Youth and Title II programs. CLASP suggests that the Departments emphasize that the employment or education need not be attained until one year *after exit*. In addition, the Departments should provide a well-defined process for meeting this requirement and programs should use administrative data, not self-reports.

Additionally, the Departments will need some way of defining “industry-recognized certificates and certifications,” which is one component of the definition of “recognized postsecondary credential.” CLASP suggests that quality certifications set the standards against which mastery is assessed through a defensible, industry-wide job analysis or role-delineation process and use examination processes that meet psychometric rigor to assure they are fair, valid, and reliable.

Finally, CLASP recommends that for Title I, this measure apply to all participants (once they exit from the program) as is provided for in the statutory definition, rather than only to those participants who received training services under Title I. This interpretation preserves the statutory intent of this measure, as well as the common definition that will be used in the other programs that are subject to this metric. Most important, if the regulation were to apply this measure only to those who receive training services, it would create a strong disincentive to provide training. This negative result occurred with the credential attainment rate under the original WIA Title I measures, which is in part why the measure was eliminated when common measures were introduced. WIOA should provide incentives to increase the use of proven training strategies, and the regulations should not introduce new disincentives to using WIOA funds for training services.

### **§677.155(a)(1)(v) Measurable Skill Gains Indicator**

In summary, with regard to the measurable skill gain indicator, CLASP makes the following suggestions.

- The Departments should use the Measurable Skill Gain indicator as an interim measure of progress
- The Departments should create a non-exhaustive list of possible documented progress measures (possible types of gains) in the final rule
- Beginning with the illustrative list in the draft rule, the Departments should add industry-recognized credentials, measurable workforce preparation skills, and others that come out of the NPRM consultation process

- The Departments should require local boards to write into their local plans an exhaustive list of the documented progress measures they will use. This would include the non-exhaustive list established in the final rule, along with additional documented progress measures that the local board expects to use in light of its unique program designs and delivery strategies. Local boards should be allowed to use only the documented progress measures that are included in the local plan. The plan should be approved by the state, and the state should monitor to ensure that local boards use only skill gains documented in their plan.
- To document a measurable skill gain, local boards should document two items: the documented progress measure and the education or training program in which the progress was made.
- To be eligible for a measurable skill gain, an education or training program (or series of programs) should be 16 weeks or longer, include at least one measurable skill gain, and lead to a recognized postsecondary credential or employment
- Goal setting should be at the indicator level (measurable skill gain-level, not the documented progress measure-level), and the documented progress measures in the final rule should be used in the regression adjustment model.
- The Departments should collect initial data on the indicator before negotiating goals and creating the adjustment model. Initial goals should be modest to allow states and local areas to adjust to using the new measure.

### **Interim Progress Measure:**

The Departments are considering using the Measurable Skills Gains indicator to measure interim progress of participants who may be enrolled in education or training services for a specified reporting period. CLASP strongly supports using this indicator as an interim measure of progress that helps programs show the progress of low-income or lower-skilled individuals who may take longer to achieve a postsecondary credential or complete a program and enter employment. If properly designed, this indicator can encourage longer-term and more intensive training, for example, through participation in a career pathway program.

### **Definition:**

The proposed rule defines measurable skill gains as “documented academic, technical, occupational or other forms of progress towards such a credential or employment.”

CLASP applauds the Departments for specifying in this proposed definition that the skills must be “documented.” We urge the Departments to work to make the indicator meaningful and rigorous, while still creating incentives for providing services to low-income and lower-skilled individuals, possibly by setting criteria for what “documented” means. Making the measure too easy to attain will lead to a less meaningful measure, which in turn would reduce its effectiveness as an incentive to serve low-skilled individuals.

In general, CLASP believes that any of the four types of progress (academic, technical, occupational, or other) could in theory be available in any of the applicable core programs: Title I Adult, Title I Dislocated Worker, Title I Youth, Title II Adult Education, and Title IV Vocational Rehabilitation.

While we expected that “academic” skills would be included, CLASP also applauds the Departments’ explicit inclusion of technical and occupational skills in the definition, recognizing that the measurable skill gains indicator can and should be used in Title I programs. This will give incentives for Title I programs to serve more high-need adults and youth and encourage co-enrollment across programs.

CLASP appreciates the restatement from the statute that the progress must be working “toward such a credential or employment.” In implementing this measure, it will be critically important that programs see this measure as progress that is part of a longer-term education or training program.

Finally, CLASP suggests that “other forms of progress” should explicitly include “workforce preparation” skills, specifically as narrowly defined in WIOA Sec.203(17) as “basic academic skills, critical thinking skills, digital literacy skills, and self-management skills, including competencies in utilizing resources, using information, working with others, understanding systems, and obtaining skills necessary for successful transition into and completion of postsecondary education or training, or employment.”

### **Examples:**

The Departments provide an illustrative list of documented progress measures. The list includes:

- at least one educational functioning level,
- attainment of a high school diploma or its equivalent,
- a transcript showing one academic year (or 24 hours),
- satisfactory progress report from an employer who is providing training,
- successful completion of an exam required for a particular occupation,
- progress in attaining technical or occupation skills evidenced by trade-related benchmarks such as knowledge-based exams, and
- measurable, observable performance based on industry standards.

CLASP supports all these as examples of measurable skill gains, with one suggested change: in addition to using 24 credit hours to represent one academic year, the Departments should also include competency-based credit representing one year, in recognition of the movement toward competency-based education in both secondary and postsecondary settings

In addition, CLASP suggests adding the attainment of an industry-recognized credential and other recognized postsecondary credentials to this list of documented progress measures, because the attainment of such a credential cannot be counted as a positive outcome for the credential attainment indicator until *after* the participant exits. This change will support the model of stackable credentials, especially in career pathways. It will help programs to get credit for credentials attained throughout the duration of a program before the participant exits, and would reduce the incentives to exit an individual after he or she attains an



initial credential, solely in order for the program to take credit for a positive outcome under the credential attainment measure.

As mentioned above, CLASP also suggests adding measures of progress in workforce preparation. The challenge is to limit these measures to youth and adults who really need them. Each item on the menu of possible skill gains should be available to individuals based on their starting points and needs.

### **How to ensure a rigorous but flexible measure:**

CLASP suggests that local boards should be required to include in their local plans: 1) a description of their process, including how they will use the measurable skill gains indicator based on their service delivery strategies across programs, and 2) a list of the measurable skill gains they will be utilizing in the coming year. This should include the illustrative list in final regulations, to which local areas can add other measurable skill gains related to a program or series of programs. The plan should include any assessments that will be used to measure gains where appropriate and feasible.

The local plan is approved by the state, giving one level of accountability. Then the state should monitor the local area's use of measurable skill gains. The goal is to give local boards the flexibility to use measurable skill gains in their existing or innovative program designs, while ensuring that there is an inclusive list of possible skill gains for a local area, so that the skill gains are well-designed and well-connected to specific service strategies.

### **How to document in a standardized way:**

The Departments request comments on how states can measure and document participants' measurable skill gains in a standardized way. CLASP suggests that the Departments require local boards to document measurable skill gains at the local level, understanding that the state will monitor this documentation. Local areas should be required to document at least two components: 1) the skill gain (one of the options listed in the local plan) and 2) the program or series of programs in which the individual made the skill gain. If applicable, the assessment used to measure the gain should also be documented. This would help ensure that all gains are explicitly part of a longer education or training program that leads to a recognized postsecondary credential or employment. Skill gains should not be thought of as independent, but rather as a milestone within a program. The two components together would need to be reported to document the measure in a standardized way. Again, this should be documented at the local level and monitored by the state, with the Departments holding states accountable for enforcement of the overall process.

In addition, there should be a way to report in the individual participant information submitted to the Departments whether an individual has achieved multiple skill gains, and in what category each gain was achieved (using the list of skill gains in the final regulations as the categories). For co-enrolled participants, the gains should be documented in each core program.

**Eligible program or series of programs:**

CLASP suggests that the final rule should include the characteristics of a program or series of programs eligible for a measureable skill gain. Characteristics should include that the program (or series of programs): leads to a postsecondary credential or employment, has at least one interim progress milestone, and meets the minimum duration threshold, as described below. We are not suggesting the Departments create or require the creation of a list of programs, but rather that, when local areas are documenting individual participants' skill gains and the associated programs in which those gains were received, the programs being documented should have the characteristics identified in the final rule.

**Time intervals:**

The NPRM asks “whether time intervals are required and what the time intervals might be.” We interpreted this query to ask whether there should be a minimum program duration threshold for a skill gain to be available in an education or training program. In other words, how much time does a program need to take in order for it to make sense to have interim skill gains attained within that program?

CLASP supports a minimum program duration threshold for three reasons. First, to have a legitimate, substantive progress measure or milestone, a program (or planned series of programs) should be sufficiently long and intensive. Second, a minimum program duration would be consistent with what CLASP perceives as the intent of this measure: to encourage longer-term interventions for those who need them. Third, measurable skill gains should not be available in short education or training programs, because the measure would become overused and less meaningful.

In previous [documents](#), we have suggested that measurable skill gains should not be available for very short programs (e.g., 2-4 weeks).<sup>ii</sup> After further consideration, we now expand this recommendation, suggesting that measurable skill gains should not be available to programs that are shorter in duration than 4 months (16 weeks), with a few exceptions noted below. Ideally, this measure would apply to programs that are even longer and more intensive, such as six months in duration, but we recognize that the field is moving towards more accelerated and integrated programs that may be very intensive, but not six months long.

We suggest measuring by weeks because the number of weeks a participant spends in training is already measured under WIA Title I,<sup>iii</sup> and it would be less burdensome to measure programs in weeks (rather than contact hours or some combination of length and intensity, although that is another option that could be used).

We suggest a 16-week minimum program (or series of programs) duration threshold because it is near the 15-week requirement for a program to be eligible for Pell Grants. Also, according to the Program Year 2012 Workforce Investment Act Standardized Record Data (WIASRD) Data Book, about 60 percent of Title I Adult participants with training received at least 13 weeks of training, a reasonable proportion for inclusion in the measure.

It is important to note that the exception should be “at least one educational functioning level.” A measurable skill gain of at least one education functioning level should be available within the process in the proposed regulation at §462.40(c)(3), which for the first time requires in regulations that states must have an assessment policy and lists what must be included in the policy. We recommend this exception from our suggested four-month duration threshold because the National Reporting System and the timeframes between pre-tests and post-tests (at least 100 hours) are already well established and should be utilized for educational functioning levels.

There may be other situations when exemption from the minimum program duration threshold may be appropriate, especially for gains made in Vocational Rehabilitation programs, on which CLASP does not have expertise.

Please note that we do not suggest that there should be different duration thresholds for different programs, but rather that there should be different documented progress measures.

### **Goal setting at the indicator level:**

The Departments request comments on whether the performance targets for this indicator should be set at the indicator level (i.e. measurable skill gains) or the documented progress measure level (e.g., attainment of high school diploma). CLASP recommends that the target should be set at the indicator level, because setting goals for all of the possible documented progress measures would create a large number of measures to be reported and targets that would need to be met. We are concerned that this would be too burdensome for the programs. Setting the target at the indicator level also has the benefit of being easily understood.

There is a need, however, to take into account the mix of types of gains that programs expect to attain when setting goals. For example, a program with all high school graduates would not expect any high school equivalencies to be counted as measureable skill gains, whereas an adult education program that serves individuals with very low literacy might expect to attain mainly education level gains as its measurable skill gains. CLASP suggests that the documented progress measures on the non-exclusive list in the final regulations should be used as factors in the regression model to predict the measurable skill gains.

It will be necessary to collect data on the indicator before negotiating goals and developing an adjustment model. It is important to give this process enough time for the programs to adapt to the concept of the measurable skill gain indicator as an interim measure of progress.

Initial goals should be modest. Making the measure too easy to attain and setting very high targets may cause programs to use the easiest route to a skill gain, even if that is not the most appropriate skill gain for the individual. High targets only increase over time due to continuous improvement goals, further leading programs to seek the easiest route to gains. Such a situation would make the measure less meaningful and less effective at creating incentives for enhanced services for individuals with low basic skills.

**§677.155(a)(1)(vi) Effectiveness in Serving Employers**

The Departments present four measurement concepts for the Effectiveness in Serving Employment indicator. CLASP recognizes strengths and weaknesses in each approach. The Departments request comments on the merits of constructing this as a shared indicator across programs compared with applying the measure to individual core programs. CLASP suggests that the measure should be applied across programs with a single negotiated target. This would promote coordination of business services and avoid the problem of multiple programs contacting the same employers for feedback.

**§677.160 What information is required for State performance reports?**

Among other items, the proposed regulation requires state performance reports to document the total number of participants served and the total number who exited each of the core programs. CLASP strongly supports the Departments' requirement to report these data disaggregated for 1) individuals with barriers to employment and 2) co-enrollment in any of the core programs. Understanding which participants are co-enrolled and seeing their outcomes broken out will encourage co-enrollment and help programs to see the benefits of co-enrolling participants when appropriate. CLASP strongly supports co-enrollment and suggests more could be done in regulations to help the Titles operationalize this important strategy, such as describing how co-enrollment will be measured through individual record data and how each core program will receive "credit" for performance measures in a co-enrollment structure.

In addition, the proposed rule requires that information on performance levels achieved for all indicators and all programs must be disaggregated by 1) individuals with barriers to employment, 2) age, 3) sex, and 4) race and ethnicity. CLASP strongly supports this disaggregation, because it is critical to see that underserved populations are being served in programs and to identify disparities in outcomes so that they can be addressed.

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

As part of the process to for establishing the adjusted levels for the primary indicators of performance, the draft rule says that the Secretaries of Education and Labor will establish "an objective statistical model" based on economic conditions and participant characteristics. The participant characteristics listed in the draft regulations reflect the statutorily required factors: 1) indicators of poor work history; 2) lack of work experience; 3) lack of education or occupational skills attainment; 4) dislocation from high-wage and high-benefit employment; 5) low levels of literacy; 6) low levels of English proficiency; 7) disability status; 8) homelessness; 9) ex-offender status; and 10) welfare dependency.

CLASP advises that the final rule should recognize that the Secretaries will have to establish multiple statistical models, not just one, as implied in the proposed rule. Separate models should be created for different indicators and programs, as is the practice under WIA. For example, the youth models will likely differ from the models for programs that serve primarily adults.

It is important to note, however, that each program-indicator should have only one adjustment model for all the participants in the program; there should not be two separate models in the same program-indicator for participants receiving training and participants who are not receiving training services, as some may be suggesting. CLASP would oppose such a change to the proposed regulation, as it would remove incentives to provide training, especially to low-income, lower-skilled individuals.

Further, CLASP urges the Departments to interpret the statutory list as required elements, but not a fully inclusive list of all the possible factors the Secretaries may use. The predictive power of the factors based on baseline data, along with evaluation of past research, should undergird the models.

The Departments request comments on whether any additional factors beyond those in the statute should be considered in developing the models. CLASP believes that gender and race/ethnicity should be considered for inclusion in the models. We understand that these variables are already in use in some instances under WIA. It is important to note that including these variables would in no way condone pay inequality in the marketplace. Rather, inclusion would give incentives to serve those who may have lower expected earnings. In addition to economic and participant characteristics listed in the statute, CLASP suggests the Departments include selective programmatic factors in the models for certain measures, particularly measurable skill gains as discussed in the corresponding section above.

We also suggest including age and lack of a high school diploma. The adjustment models should be sensitive to the characteristics of the youth population served. For instance, an area that chooses to serve a younger dropout population should have different performance expectations than one that serves older high school graduates.

The Departments also request comments on the best approach to updating the model. CLASP suggests that in updating the model, the Departments should take into account not just the revised definitions of specific measures, such as employment rate, but also the revised population to which the measure will apply (for example, out-of-school youth).

Because of the change in youth populations that will be served under Title I Youth, it is unlikely that previous data used to calibrate the adjustment models will be representative of the new, higher-risk youth population. In creating and calibrating the performance models for the youth system, data from programs such as YouthBuild, Homeless and Runaway Youth, and the numerous offender initiatives should be leveraged to inform the models. Additionally, data specific to high school dropouts from WIA Title I Adults (ages 18-24) and out of school youth in WIA Title I Youth should also be considered.

Finally, CLASP recommends that the Departments continue to consult with the research community, state and local practitioners, and policy experts on the development of the adjustment models, as well as other aspects of the performance management policy under WIOA. In our view, the publication of the WIOA NPRMs is the beginning of a process for developing an effective performance system for WIOA, and this process will be ongoing as the WIOA programs take shape at the state and local levels. A sustained commitment to consultation will help the Departments to identify potential unintended consequences and take steps to minimize them.

## **Subpart B—Sanctions for State Performance and the Provision of Technical Assistance**

### **§677.190 Sanctions for failure to achieve adjusted levels of performance**

The proposed regulations include three criteria: overall program performance, overall indicator performance, and individual indicator performance; this would provide accountability for all programs and all measures. CLASP appreciates the thoughtfulness of this approach and believes it will help programs approach accountability as a shared responsibility.

Two thresholds are proposed for determining failure: 90 percent of target for overall program and overall indicator, and 50 percent of target for individual indicators. CLASP notes that the great difference between 90 percent and 50 percent may lead to all individual indicators hitting the 50 percent threshold, but failing the corresponding 90 percent overall program or overall indicator score, a situation that may send mixed messages to programs.

The Departments request comments on potentially setting the 90 percent threshold higher to emphasize the importance of performance success on the overall program and overall indicator criteria. CLASP advises against increasing the 90 percent threshold because there is already such a stark difference between the 50 percent and the 90 percent levels, the 90 percent is likely to increase in the future due to continuous improvement goals, and such a high goal may lead to creaming or gaming the measures.

Consistent with CLASP's recommendation to combine all program performance for the Effectiveness in Serving Employers indicator, individual program-level goals should not be set for this indicator, and therefore should not be included in the overall score for each program. There should only be a score for the combined performance result across the programs for the indicator.

The Departments request comments on the timing for using the annual state report to determine success or failure against adjusted levels of performance. CLASP suggests that sanctions should not be imposed on "new" indicators until the measures have been in place long enough for two things to happen: 1) the programs have adapted their service designs and 2) data is collected to establish baseline benchmarks from which to establish adjusted levels. New indicators include, at a minimum, Credential Attainment Rate, Measurable Skill Gains, and Effectiveness in Serving Employers (which are new for all programs except for Title III, where these measures do not apply), and for Title II and Title I Youth, earnings and both of the employment measures. CLASP strongly recommends that these indicators not be included in the scoring for sanctions for at least the first two years.

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

The proposed regulation explains that the sanction will be 5 percent of the amount that could otherwise be reserved by the Governor, not a *percentage point* reduction in the overall state allotment that could otherwise be reserved by the Governor. CLASP supports this interpretation and agrees that the percentage point interpretation would be unnecessarily punitive and inconsistent with the overall intent of WIOA.

## **Subpart C—Local Performance Accountability for Workforce Innovation and Opportunity Act Title I Programs**

### **§677.210 How are local performance levels established?**

The proposed regulation implements the statutory requirement that Governors apply a statistical adjustment model when determining local adjusted levels of performance. CLASP believes it is important that Governors use the adjustment models and appreciates the clarity on this requirement in the proposed regulations.

With respect to the negotiation of local performance targets, Governors must develop the negotiations process and disseminate it to all local boards and chief elected officials. CLASP urges the Departments to require that the Governor-developed process provide for a meaningful negotiation process, not simply setting the target independently and passing it down to local stakeholders. In addition, the timeline for the negotiation process should begin early enough in the program year to allow for meaningful and constructive discussion between states and local areas regarding the populations, program design, and important factors to be included in setting the standards.

## **Subpart F—Performance Reporting Administrative Requirements**

### **§677.235(b) What are the reporting requirements for individual records for core Workforce Innovation and Opportunity Act title I, III, and IV?**

This section of the proposed rule requires programs to submit individual records in one record that is integrated across all core programs. The proposal would require that individual records submitted by states be standardized in terms of data elements and associated reporting specifications. CLASP supports the use of a single standardized record because it will assist in keeping individuals co-enrolled across programs, including enabling a common exit approach, when appropriate.

## **PART 678—Description of the One-Stop System Under Title I of the Workforce Innovation and Opportunity Act**

### **Subpart B—One-Stop Partners and the Responsibilities of Partners**

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

CLASP supports building partnerships across programs to improve service delivery, especially to individuals with barriers to employment. One way that WIOA encourages access to services for low-income individuals and those with barriers to employment is by mandating TANF program to be a required partner in the one-stop system. Proposed §678.405 implements this provision of the law, and clarifies that TANF is a required one-stop partner (unless the Governor opts out). CLASP appreciates the language in proposed §678.405(c), which 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. As noted in our comments on proposed §676.140, to clarify this point further, CLASP urges the Departments

to explicitly state that the Governor's decision about whether to opt out TANF as a required partner is separate and distinct from the decision about whether to include TANF in a Combined State Plan.

### **§678.735 How are partner contributions determined in the state one-stop funding mechanism?**

Under WIOA, required partners must contribute to local one-stop infrastructure, and the law provides two mechanisms for assessing these costs among the one-stop partners. First, the partners are to engage in a local negotiation to reach a consensus about cost allocation. Second, as a backstop in the absence of agreement at the local level, the law requires Governors to determine the allocation of one-stop infrastructure costs, using a "State one-stop funding mechanism" that specifies limitation on the partner contributions.

CLASP applauds the Departments for their interpretation in proposed §678.735(c)(2) of the caps on contributions from "other" one-stop partners in cases when the state one-stop funding mechanism is used, which would clarify that the 1.5 percent caps on funding of one-stop infrastructure by required partners are to be applied to the share of federal funding attributable to the relevant employment and training program of a required one-stop partner, rather than to the state's total federal funding for that partner. In the case of TANF, this interpretation appropriately notes that states use their federal TANF block grant for many purposes other than employment and training activities, and it would be improper to apply the 1.5 percent cap to the state's entire TANF grant. To provide further clarity in applying this principle to the case of TANF as a required partner, CLASP recommends that the Departments make the following changes to proposed §678.735(c)(2):

- i. First, as a clerical matter, the final regulation should rectify a typographical error in the text of the proposed regulation, immediately after the word "Limitations" in §678.735(c), which refers to an incorrect citation to the WIOA law. The text of the regulation mistakenly cites WIOA Section 122(h)(2)(D); the correct citation is WIOA Section 121(h)(2)(D). Note that the correct statutory citation appears in the corresponding section of the preamble.
- ii. In explaining how the cap will be applied in the example of TANF, the preamble to this section of the proposed regulations states that the 1.5 percent cap on contributions applies to the state's "employment and training activities" funded by its federal TANF grant. However, the corresponding regulatory text states that the portion of funds required to be contributed by "other one-stop partners" (including TANF) is capped at 1.5 percent of the federal funds provided to "carry out that education program or employment and training program," using the word "program" instead of the word "activities." In the case of TANF, the term "employment and training activities" is more appropriate, as used in the example in the preamble. We suggest that the regulatory text be changed to conform with the preamble, to refer to "employment and training activities."
- iii. In addition, in an effort to comprehensively include the many potential one-stop partners, some of which provide education services while others provide employment and training services, the regulatory text states that the 1.5 percent cap would apply to a one-stop partner's "education



program” *or* its “employment and training program.” However, some states use a portion of their TANF block grant funds to provide education services for children in low-income households, such as pre-Kindergarten programs. We are concerned that this portion of a state’s TANF funding could be erroneously categorized as an “education program” for the purpose of calculating the one-stop infrastructure funding cap under this regulation, even though the children receiving education services through this portion of the state’s TANF funds clearly are not the intended customers of one-stop services. We urge the Departments to clarify the definition of “education program” in §678.735(c)(2) to ensure that the 1.5 percent funding cap is not applied to the portion of the state’s TANF block grant that is used for “education programs” serving dependent children in low-income households. The final regulations should clarify that, for purposes of this infrastructure funding calculation, TANF-funded education services would only be included if the education is provided to adults or teen heads of households in needy families.

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<sup>i</sup> Tim Harmon, “Shared Accountability in WIOA and Career Pathways.” CLASP, 2014. [http://www.clasp.org/resources-and-publications/publication-1/WIOA\\_sharedaccountability.pdf](http://www.clasp.org/resources-and-publications/publication-1/WIOA_sharedaccountability.pdf)

<sup>ii</sup> Anna Cielinski, “Using Measurable Skill Gains to Best Serve Low-Income, Lower-Skilled Individuals.” CLASP, 2014. [http://www.clasp.org/resources-and-publications/publication-1/WIOA\\_skillgains.pdf](http://www.clasp.org/resources-and-publications/publication-1/WIOA_skillgains.pdf).

<sup>iii</sup> Weeks participated in training is reported in the PY 2012 WIASARD Data Book in 7 categories: 4 or fewer weeks; 5 to 13 weeks; 14 to 26 weeks; 27-39 weeks; 40 to 52 weeks; 53 to 104 weeks; and More than 104 weeks.